



KATIBA

MADE FAMILIAR

By Ng'ang'a Muigai

“The role of our generation is to identify as many problems as possible, provide as many solutions as possible and take as much constitutional action as possible for our beloved nation.” - Author

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WHERE IT ALL STARTED



When Mercy Tarus confronted the leadership of Uasin Gishu County over the Finland – Canada scholarship scandal, it was clear our country had changed forever.

This book recognizes her as the Pioneer of the Gen-Z uprising in Kenya.

She is the Jelangat Mutai of our generation.

In her words, truly, *“Kenya ni home and home must be respected.”*

Preamble

We, the people of Kenya;

ACKNOWLEDGING the supremacy of the Almighty God of all creation;

HONOURING those who heroically struggled to bring freedom and justice to our land;

PROUD of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation;

RESPECTFUL of the environment, which is our heritage, and determined to sustain it for the benefit of future generations;

COMMITTED to nurturing and protecting the well-being of the individual, the family, communities and the nation;

RECOGNISING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;

EXERCISING our sovereign and inalienable right to determine the form of governance of our country; and having participated fully in the making of this constitution;

ADOPT, ENACT and give this Constitution **to ourselves and to our future generations**.

GOD BLESS KENYA.

Chapter One—Sovereignty of the People and Supremacy of This Constitution

Sovereignty of the people.

- (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.
2. The people may exercise their sovereign power either directly or through their democratically elected representatives.
3. Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—
 - a. Parliament and the legislative assemblies in the county governments;
 - b. the national executive and the executive structures in the county governments; and
 - c. the Judiciary and independent tribunals.
4. The sovereign power of the people is exercised at—
 - a. the national level; and
 - b. the county level.

I. Simple Explanation

Think of Kenya as a giant company or a *Chama*. In this arrangement, **You (the Citizen)** are the owner and shareholder. You hold all the power ("Sovereign power").

The President, Governors, MPs, Senators, and Judges are simply employees hired to manage the company on your behalf. They do not own the power; they are just borrowing it from you for a specific period (usually 5 years) to do a specific job.

You can use your power in two ways:

1. **Do it yourself (Directly):** Like voting in a referendum.
2. **Send someone else (Delegated):** Like electing an MP to go speak for you in Parliament.

This power is shared between the "Big Government" in Nairobi (National) and the "Local Government" in your area (County).

How does this affect you?

- **You are the Boss:** It shifts the mindset from "Serikali said" to "We decided." The government answers to you, not the other way around.
- **Accountability:** Since the leaders are exercising *your* power, they must explain how they use it. If a Governor misuses funds, they are misusing *your* power and resources.

Dual Citizenship benefits: You are served by two levels of government. You don't have to look to Nairobi for everything; the County government holds power delegated by you to fix local issues like dispensaries and feeder roads.

II. What are your rights per this article?

- **Right to Vote:** This is your primary way of "hiring" those representatives.
- **Right to Recall:** If the person you gave power to (like an MP) is not working, you have the right to take that power back before their term ends.
- **Right to Participate:** You have the right to attend public participation forums (like budget hearings) because you are exercising your direct sovereign power.
- **Right to Justice:** You can sue the government if they act outside the Constitution because they are violating the contract through which you gave them power.

III. Real World Example

- **The Matatu Analogy:** Imagine you own a Matatu (Kenya). You hire a driver and a conductor (The Government). Even though they drive the car every day, **they do not own it.** You do. If they drive recklessly or steal the fare, you have the right to fire them.
- **Elections:** When you wake up at 4:00 AM to vote in a General Election, you are actively transferring your "Sovereign Power" to the MCA or President for the next 5 years.
- **Public Participation:** When the County Government calls a meeting to ask which roads should be tarmacked, and you attend to give your views, you are exercising your power **directly**, rather than waiting for the Governor to decide for you.

Supremacy of this Constitution.

(1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.

2. No person may claim or exercise State authority except as authorised under this Constitution.

3. The validity or legality of this Constitution is not subject to challenge by or before any court or other State organ.

4. Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

5. The general rules of international law shall form part of the law of Kenya.

6. Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Defence of this Constitution.

3. (1) Every person has an obligation to respect, uphold and defend this Constitution.

(2) Any attempt to establish a government otherwise than in compliance with this Constitution is unlawful.

I. Simple Explanation

Think of the Constitution as the "Supreme Boss" or the "Holy Book" of the laws in Kenya. It is the final authority. If Parliament passes a law, or a village elder tries to enforce a tradition (Customary Law), or the President gives a directive that goes against the Constitution, the Constitution wins. It automatically cancels out any "bad" law. Also, this article opens the door for international standards. If Kenya signs a major international agreement (like a Human Rights treaty), it essentially becomes part of our local law.

II. How does this affect you?

- **Protection from Bad Traditions:** If your local culture says women cannot inherit land, but the Constitution says they can, you don't have to follow the culture. The Constitution protects you against harmful traditions.
- **Protection from Bad Laws:** It ensures that MPs cannot just wake up and write a law that oppresses you. If they do, that law is "dead on arrival" (void) because it fights the Supreme Boss.
- **Global Standards:** You enjoy protections not just from Kenyan ideas, but from global standards of human rights.

III. What are your rights per this article?

- **Right to Challenge Laws:** You have the right to go to court and ask judges to cancel a law if it contradicts the Constitution.
- **Right to Equality:** You have the right to ignore customary practices (like forced marriage or FGM) that violate the written Constitution.
- **Right to International Protection:** You can claim rights found in international treaties ratified by Kenya, such as the Rights of the Child.

IV. Real World Example

- **The Land Inheritance Case:** In some communities, it is "customary law" that daughters do not inherit land from their fathers. However, because Article 2 says the Constitution (which guarantees equality) is supreme, courts have ruled that daughters *must* inherit, making the customary rule "void."
- **International Sports Rules:** When Kenya ratifies international anti-doping conventions, those rules become part of Kenyan law under this Article.
- **Unconstitutional Acts:** If a Governor fires a county executive without following the process written in the Constitution, the court declares the firing "invalid" because the Governor's authority is lower than the Constitution's authority.

Article 3: Defence of this Constitution

I. Simple Explanation

This article assigns every Kenyan a mandatory job: "Security Guard." It says that protecting this book isn't just work for the Police or Judges; it is the duty of *every person*. It specifically warns against coups or dictatorships. It says that the only way to get into power is through the methods listed in this book (elections). Trying to seize power by force or shortcuts is a crime.

II. How does this affect you?

- **Civic Duty:** It gives you the legal backing to speak up when you see the government breaking the law. You aren't just a troublemaker; you are fulfilling a constitutional obligation.
- **Stability:** It protects your business and family from the chaos of coups or illegal takeovers, ensuring that leadership changes happen peacefully through the ballot, not the bullet.

III. What are your rights per this article?

- **Right to Petition:** You have the right (and obligation) to go to court to stop a government action that threatens the Constitution.
- **Right to Resist:** You have the right to refuse to recognize a government or leader who takes power illegally (e.g., through a coup).

IV. Real World Examples

- **The "Okiya Omtatah" Effect:** When activists go to court to stop the government from implementing a new tax or project because it skipped public participation, they are "Defending the Constitution" as required by Article 3.
- **The 1982 Coup Attempt:** This article declares that any event like the 1982 attempt to overthrow the government by military force is unlawful. The only way to change the government is through the vote.
- **Whistleblowing:** A civil servant who refuses to sign a corrupt tender because it violates the procurement laws in the Constitution is actively defending the Constitution.



“If we don’t fight for the constitution today, we will be forced to fight for our freedom tomorrow.” – Okiya Omtatah

Chapter Two—The Republic

Declaration of the Republic.

4. (1) Kenya is a sovereign Republic.

(2) The Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance referred to in Article 10.

I. Simple Explanation

Article 4 establishes two fundamental facts about the country:

Kenya is a Sovereign Republic (Clause 1): "Sovereign" means that Kenya is completely independent and self-governing. No other country or outside entity has the authority to dictate how Kenya is run. "Republic" means that the Head of State (the President) is chosen by the people, not inherited through a royal family.

Kenya is a Multi-Party Democratic State (Clause 2): This defines the type of government. It officially guarantees that citizens have a choice between different political parties (multi-party system) and that the government is chosen through fair and regular elections where the people's will is respected (democratic state). Furthermore, all government actions must be based on the principles listed in Article 10 (like patriotism, human dignity, social justice, and public participation).

II. Citizen's Right & Personal Impact

Right to Self-Determination: Your government is accountable only to you and fellow Kenyan citizens, not to foreign powers. This ensures national pride and protection from external interference.

Right to Political Choice: You have the right to join any legally registered political party you choose, or none at all, and to vote for a candidate or party that genuinely represents your interests, knowing that the system is constitutionally pluralistic.

Right to Principled Governance: Every government official and institution (from the police to the County Executive) must conduct themselves according to the national values (like the rule of law, integrity, and transparency). If they don't, you have the right to challenge their actions in court under the authority of this and Article

III. Real-World Example

Scenario: After an election, a minority political party feels they have been unfairly excluded from meaningful participation in the running of a County Assembly committee.

Action based on Article 4: The party can file a petition in court arguing that the actions of the majority party (or the Assembly Speaker) violate the fundamental nature of the Republic as a "multi-party democratic State" as defined in Article 4(2). The petition would assert that democracy requires fair representation and participation of all elected parties, even those who lost.

Result: Courts have often used this article, alongside Article 38 (Political Rights) and Article 10 (National Values), to compel government organs to ensure that their actions reflect the constitutional value of pluralism and inclusivity. For instance, a court may order the reallocation of committee slots to ensure that minority parties have a genuine say, thus upholding the democratic character of the Republic.

Territory of Kenya.

5. Kenya consists of the territory and territorial waters comprising Kenya on the effective date, and any additional territory and territorial waters as defined by an Act of Parliament.

I. Simple Explanation

Article 5 clearly defines the **geographic area** that constitutes Kenya and where the country's laws apply.

1. **What Kenya Owns (Clause 1):** Kenya's territory includes all its land, the air above the land (**airspace**), the water bodies completely contained within the land (like Lake Victoria waters on the Kenyan side, called **internal waters**), and a portion of the ocean extending from the coastline (**territorial sea**). The exact limits of the territorial sea are set by a law passed by Parliament.
2. **How Territory Can Change (Clause 2):** This clause is a safeguard. It ensures that the country's borders and territory cannot be given away or changed easily by a single person or small group. Any alteration—whether gaining or losing territory—must be done in line with the procedures set out in the Constitution, which requires a specific resolution passed by **both** the **National Assembly** and the **Senate**, often involving a referendum (Article 255).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Defined Sovereignty	This article solidifies Kenya's boundaries, meaning your nation's physical security is protected. It prevents encroachment by foreign powers and gives stability to the law that governs the land you live on.
Protection from Arbitrary Loss of Land	The provision in Clause (2) is a critical check on power. It ensures that no President or government can unilaterally surrender any part of the national territory (like a disputed border region or coastal area). Your land and the resources on it are protected by the highest law.
Jurisdictional Clarity	This article confirms that wherever you are within these defined boundaries (on land, in the air, or on the waters), you are under the protection and laws of the Republic of Kenya.

III. Real-World Example

- **Scenario:** Kenya is involved in a maritime boundary dispute with a neighboring country regarding the extent of the **territorial sea** and the corresponding Exclusive Economic Zone (EEZ) in the Indian Ocean.
- **Action based on Article 5:** While the final resolution of the dispute might be determined by an international body like the International Court of Justice (ICJ), Article 5 forms the **domestic legal basis** for Kenya's claim. The government relies on this article to assert that its territorial claim, as defined by an Act of Parliament (Clause 1b), is sovereign and must be defended.
- **Result:** Should the dispute be settled and involve a **re-definition** of the international boundary that is different from the existing one, the government would be required to use the process in Article 5(2). This would mandate a resolution passed by **both the National Assembly and the Senate** (and potentially a national referendum under Article 255) to legally recognize and integrate the new boundary into the domestic law, ensuring that the people's representatives approve any change to the national territory.

Devolution and access to services.

6. (1) The territory of Kenya is divided into the counties specified in the First Schedule.

2. The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

3. A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.

I. Simple Explanation

Article 6 establishes the two core levels of governance and how they relate:

Administrative Division (Clause 1): It confirms that Kenya is formally divided into the specific counties (currently 47) that are listed in the First Schedule of the Constitution. This establishes the geographic basis for devolution.

Two Levels of Government (Clause 2): It creates two equal, but separate, systems of government: the National Government (led by the President in Nairobi) and the County Governments (led by the Governors).

They are **distinct** (each has its own functions and powers defined in the Constitution).

They are **inter-dependent** (they rely on each other for financial resources, policy coordination, and overall national unity).

They must work together based on consultation and cooperation.

Access to National Services (Clause 3): This requires all national government institutions (like the Kenya Revenue Authority, the Immigration Department, or the National Police Service) to make a genuine effort to provide their services locally and ensure they are reasonably accessible to people in every part of the country, not just in the capital city.

II. Citizen's Right & Personal Impact

Citizen's Right and Personal Impact Right to Local Governance: You have the right to demand services and accountability from your elected County Government (Governor and County Assembly). Decisions affecting local issues like health, local roads, and early childhood education are brought closer to your home.

Right to Cooperative Governance: If your County Government and the National Government are fighting over a resource or service (e.g., healthcare funding), you have the right to demand that they respect the Constitution and resolve their differences through cooperation and consultation, ensuring services are not disrupted.

Right to Accessible National Services: You should not have to travel long distances (e.g., to Nairobi) just to access a passport, register a business, or get a national ID. This article empowers you to demand that national offices decentralize their services and set up accessible branches in your county or sub-county.

National, official and other languages.

7. (1) The national language of the Republic is Kiswahili.
2. The official languages of the Republic are Kiswahili and English.
3. The State shall—
 - a. promote and protect the diversity of language of the people of Kenya; and
 - b. promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

I. Simple Explanation

Article 7 defines the language policy of the country at three levels:

1. **National Identity (Clause 1):** Kiswahili is designated as the **national language**. This means it is the language that symbolizes national identity, unity, and heritage across all ethnic groups.
2. **Government Business (Clause 2):** Kiswahili and English are both the **official languages**. This means they are the languages in which all government business, legal proceedings, legislation, and public documents must be conducted or published.
3. **Protection of Diversity (Clause 3):** The government has a constitutional duty to actively protect and encourage the use of all other languages, especially **indigenous languages** (the mother tongues of Kenya's various ethnic groups). Furthermore, the State must specifically promote **Sign Language, Braille**, and other accessible communication methods for persons with disabilities.

II. Citizen's Right, Personal Impact

Right to Understand Law/Government: You have the right to receive public services, official communications, and information about the law in English or Kiswahili. For example, your elected representatives can speak in either language in Parliament or County Assemblies.

Right to Cultural Expression: This clause legally protects your right to speak, teach, and maintain your mother tongue (e.g., Kikuyu, Luo, Kalenjin, Maasai, etc.). The government must support, not suppress, the use and development of these indigenous languages in education and culture.

Right to Accessibility: If you are a person with a disability, you have the right to demand that public services and official communication use appropriate formats, such as a sign language interpreter for public addresses or Braille translations for official documents.

III. Real-World Example

- **Scenario:** A County Assembly passes a new local law (a by-law) and only publishes the document in English, without a Kiswahili translation, in a region where most citizens have limited English proficiency.
- **Action based on Article 7(2):** A citizen or civil society group can challenge this by-law in court. They would argue that since both Kiswahili and English are **official languages**, the County Assembly failed to fulfill its constitutional duty to ensure accessibility and clarity by not publishing a Kiswahili version of the law, potentially making it inaccessible to the public.
- **Result:** Courts have often emphasized the equality of the two official languages. A court could compel the County Assembly to immediately provide an authoritative Kiswahili translation to ensure the public's **right to information** (Article 35) is respected alongside the language requirement of Article 7. Similarly, this article is used to campaign for the introduction of indigenous languages in early childhood education to fulfill the State's duty to "**promote the development and use of indigenous languages**" (Clause 3).

State and Religion.

8. There shall be no State religion.

I. Simple Explanation

Article 8 is brief but powerful: it means that **Kenya does not have an official religion**.

The Republic of Kenya is a **secular state**. This ensures that the government and all its institutions (like Parliament, the Judiciary, and County Governments) cannot adopt, favor, or impose any specific religion (be it Christianity, Islam, Hinduism, or any other faith) upon the citizens. The State must treat all religions and non-religious beliefs equally and impartially.

II. Citizen's Right & Personal Impact

Right to Religious Neutrality: You are protected from the government using public funds or state resources to promote or support one religion over another. For instance, the government cannot mandate religious instruction for a specific faith in public schools.

Protection of Minority Faiths: This article provides a shield for minority religious groups (or those with no faith) by ensuring they cannot be discriminated against or pressured to conform to the practices of the majority faith in public life.

Right to Freedom of Conscience: This sets the stage for the more detailed Freedom of Conscience, Religion, Thought, Belief and Opinion guaranteed under Article 32 of the Bill of Rights. It ensures that your personal spiritual or philosophical path is a private matter, protected from state interference.

III. Real-World Example

Scenario: A County Government passes a regulation stating that all public offices must display symbols or recite prayers specific to one particular religion at the start of the day.

Action based on Article 8: A concerned citizen or a religious minority group can challenge this regulation in court. They would argue that the County is violating Article 8 by effectively establishing a "State religion" or practice and using public resources to promote one faith over others.

Result: Courts would likely strike down the regulation, citing Article 8. While individual employees are free to practice their faith privately, the official machinery of the State (the public office) must remain neutral. The article is used to ensure that all state policies, laws, and practices are secular and accommodating of Kenya's rich religious diversity, upholding the separation of state and religious institutions.

National symbols and national days.

9. (1) The national symbols of the Republic are—
 - a. the national flag;
 - b. the national anthem;
 - c. the coat of arms; and
 - d. the public seal.
2. The national symbols are as set out in the Second Schedule.
3. The national days are—
 - a. Madaraka Day, to be observed on 1st June;
 - b. Mashujaa Day, to be observed on 20th October; and
 - c. Jamhuri Day, to be observed on 12th December.
4. A national day shall be a public holiday.
5. Parliament may enact legislation prescribing other public holidays, and providing for observance of public holidays.

I. Simple Explanation

Article 9 has two main functions:

1. **Defining National Symbols (Clause 1):** It formally lists the four official items that represent the identity and sovereignty of Kenya: the **National Flag**, the **National Anthem**, the **Coat of Arms**, and the **Public Seal**. These are protected emblems of the nation.
2. **Defining Symbol Use (Clause 3):** This clause mandates that the rules for how these symbols are used, protected, and respected (e.g., when to fly the flag, how to handle the Public Seal) must be established in a separate law passed by Parliament. This ensures their integrity and prevents misuse.

Note: The text you provided includes a Clause (2) that actually lists the National Values and Principles of Governance. This is the content of **Article 10**, not Article 9. For the purpose of this book, we will focus on the core of Article 9 (Clauses 1 and 3) and cover the national values in detail under Article 10, to ensure strict article-by-article accuracy.

II. Citizen's Right & Personal Impact

Right to National Identity: These symbols are a source of national identity and unity. You have the right to respect and identify with these symbols as an expression of your Kenyan citizenship, regardless of your ethnicity or background.

Protection from Misuse: Since the rules governing the symbols are set by law (Clause 3), you are protected from these emblems being used arbitrarily or disrespectfully by any individual or commercial entity. The law ensures they are used appropriately for official State purposes.

Right to Respect: When you sing the National Anthem or see the National Flag, you are participating in a nationally and constitutionally recognized act of patriotism and unity.

III. Real-World Example

Scenario: A private company uses the Coat of Arms or the Public Seal on its product packaging to make it look like they have official government endorsement.

Action based on Article 9(3): Citing the legislation established under this Article (specifically the National Flag, Emblems and Names Act), a government agency (like the Attorney-General's office) can take legal action against the company. The law passed under Article 9 strictly controls the use of these symbols.

Result: The legal framework ensures that the national symbols are reserved almost exclusively for official State use. Any unauthorized use is subject to penalty, thereby protecting the dignity and official authority represented by the Coat of Arms and the Public Seal. For instance, the Public Seal is typically reserved for authenticating the highest State documents, such as ratified treaties or appointments of senior officials, ensuring their authority is beyond doubt.

National values and principles of governance.

10. (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

- a. applies or interprets this Constitution;
- b. enacts, applies or interprets any law; or
- c. makes or implements public policy decisions.

(2) The national values and principles of governance include—

- a. patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- b. human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- c. good governance, integrity, transparency and accountability; and
- d. sustainable development.

I. Simple Explanation

Article 10 is the Constitution's **moral compass**. It means that the long list of values in Clause (2) is not just a wish list—it is a **binding obligation** (Clause 1) for every single person who works for the government (from the President to the local clerk) and even for private citizens when they are interacting with the law.

Essentially, whenever a decision is made—whether writing a law, judging a court case, or implementing a public health policy—it **must be guided** by the principles of integrity, human dignity, social justice, and all the other listed values.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Principled Service	You have a constitutional right to demand that public officers serve you with integrity , transparency , and accountability . If a police officer, a civil servant, or an elected official act corruptly or unfairly, they are directly violating this fundamental article.
Right to Inclusivity and Equity	This article ensures that the government must address the specific needs of the marginalised groups (such as persons with disabilities, women, or those in remote regions). It is the basis for demanding policies that promote equity (fairness) rather than just simple equality (treating everyone the same).
Right to Public Participation	The government cannot make major decisions that affect your life (like budgets or development projects) without first giving you a genuine chance to contribute your views and participate in the decision-making process.

III. Real-World Example

Scenario: A County Government drafts its annual budget but holds the mandatory public participation meeting in a distant location, gives very little notice, and does not provide translated documents, effectively locking out most citizens.

Action based on Article 10: A civil society group or a concerned citizen can sue the County Government, arguing that the budget process is unconstitutional because it violates the values of public participation, transparency, and accountability as mandated by Article 10(2)(a) and (c).

Result: The Courts have established that public participation must be meaningful, timely, and accessible. In numerous cases, courts have nullified laws, budgets, or public tender processes where the government failed to comply with the high standards of integrity and public participation set by Article 10. This article empowers the people to ensure that governance is not just legal, but also ethical, transparent, and fair.

Culture.

11. (1) This Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.

2. The State shall—

- a. promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
- b. recognise the role of science and indigenous technologies in the development of the nation; and
- c. promote the intellectual property rights of the people of Kenya.

3. Parliament shall enact legislation to—

- a. ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and
- b. recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.

I. Simple Explanation

This article states that our culture is the foundation of Kenya and the government of Kenya **MUST** protect and promote it.

Article 11 elevates culture to a fundamental principle of the nation. It states that Kenya's diverse cultures—encompassing its arts, languages, traditional knowledge, and way of life—are the very foundation of its national identity and its history as a civilization.

The government (The State) is not just allowed to support culture; it has a constitutional duty to actively:

Promote and protect all types of cultural expression, from writing books and painting to traditional festivals and local knowledge (Clause 2a).

Recognise the value of local, traditional technologies and knowledge systems in the country's development (Clause 2b).

Preserve and showcase Kenya's cultural heritage (Clause 2c).

II. Citizen Right and Personal Impact

- **Right to Cultural Expression:** You have the right to practice your cultural traditions, speak your indigenous language, create art, and celebrate your heritage without fear of government suppression.

- **Protection of Intellectual Property:** This article provides a basis for protecting your indigenous knowledge (e.g., traditional herbal remedies, craft techniques, or folklore) and ensuring that if this knowledge is used commercially, the rightful owners or community benefit from it.
- **Right to Heritage Preservation:** You can demand that the government fund and maintain cultural institutions, museums, and historical sites, ensuring that the heritage of your community is preserved and accessible for future generations.

III. Real World Examples

Scenario: A community discovers that a foreign company has patented a herbal medicine traditionally used by them, without acknowledging or compensating the community for their indigenous knowledge.

Action based on Article 11: The community, supported by the national government's duty to protect culture and indigenous knowledge (Clause 2a and 2b), can lobby or seek legal redress. They would argue that their intellectual property rights regarding their indigenous knowledge must be protected and promoted as a form of cultural expression and national heritage.

Result: This article provides the constitutional foundation for developing and enforcing laws, such as specific Intellectual Property laws, that recognize the communal ownership of traditional knowledge. It can be used to compel the government to establish mechanisms that ensure local artists, musicians, writers, and traditional knowledge holders are appropriately compensated and protected when their cultural works are used.



“The greatness of our nation lies in its fidelity to the constitution and adherence to the rule of law.” – David Kenani Maraga – C.J Emeritus.

Chapter Three - Citizenship

Entitlements of citizens.

12. (1) Every citizen is entitled to—

a. the rights, privileges and benefits of citizenship, subject to the limits provided or permitted by this Constitution; and

b. a Kenyan passport and any document of registration or identification issued by the State to citizens.

(2) A passport or other document referred to in clause (1) (b) may be denied, suspended or confiscated only in accordance with an Act of Parliament that satisfies the criteria referred to in Article 24.

I. Simple Explanation

This article establishes what every person who holds Kenyan citizenship is guaranteed by the State.

Core Benefits (Clause 1a): It grants all citizens the full package of rights, privileges, and benefits that come with being Kenyan. These include the political rights (like voting), the socio-economic rights (like health and education), and the right to hold public office. However, these rights can be limited only in ways that the Constitution itself allows (e.g., during a state of emergency) or as defined under Article 24 (Limitation of Rights).

Right to Identification (Clause 1b): It explicitly guarantees every citizen the right to a Kenyan passport and all official identification documents (like a National ID card or birth certificate) issued by the State.

Protection Against Arbitrary Confiscation (Clause 2): This is a critical safeguard. It ensures that the State cannot arbitrarily deny, suspend, or confiscate your passport or ID card. Such action can only be taken if there is a specific, legally sound reason defined in a separate Act of Parliament, and that law must meet the strict standards for limiting rights as set out in Article 24 (i.e., the limitation must be reasonable and justifiable).

II. Citizen's Right and Personal Impact

Right to Full Protection: You are entitled to the full protection of the law and access to all State services—from security to education—simply because you are a citizen.

Right to Documentation: You have a non-negotiable right to your passport and ID card. If a state officer refuses to issue or renew these without legal cause, they are violating a direct constitutional entitlement

Protection from Punitive Action: Your right to travel (using your passport) or transact business (using your ID) cannot be taken away on a whim. The government must follow a transparent, legally defined process to limit these entitlements, which you can challenge in court.

III. Real-World Example

Scenario: A citizen applies for a renewal of their passport, but the Immigration Department refuses to issue it, claiming the person is under investigation for an unspecified crime, without any formal charge or court order.

Action based on Article 12(2): The citizen can sue the government (through a judicial review application), citing Article 12. The citizen would argue that the department's refusal is an unconstitutional denial of a guaranteed entitlement because it is not based on a valid and justifiable Act of Parliament that meets the criteria of Article 24.

Result: In such cases, the High Court is likely to order the State to issue the passport. This article is used to ensure that administrative actions against citizens, such as denying documentation, must be based on the rule of law and not on arbitrary or opaque executive decisions, thereby upholding the sanctity of citizenship entitlements.

Retention and acquisition of citizenship.

13. (1) Every person who was a citizen immediately before the effective date retains the same citizenship status as of that date.

2. Citizenship may be acquired by birth or registration.

3. Citizenship is not lost through marriage or the dissolution of marriage.

I. Simple Explanation

Article 13 is a brief but critical transitional article that clarifies who is a Kenyan citizen under the 2010 Constitution:

1. **Retention (Clause 1):** This clause is a constitutional guarantee that every person who held Kenyan citizenship **before** the new Constitution of 2010 was implemented automatically **retains** their citizenship status. This ensured a smooth legal transition and prevented anyone from suddenly losing their rights.
2. **Methods of Acquisition (Clause 2):** It identifies the only two ways a person can legally become a Kenyan citizen:
 - **By Birth:** (Detailed further in Article 14) This is the most common way, usually based on having one or both parents who are citizens.
 - **By Registration:** (Detailed further in Article 15) This covers people who gain citizenship later in life, such as spouses of citizens, people who previously lost citizenship, or children adopted by Kenyan parents.
3. **Protection Against Loss (Clause 3):** This is a powerful safeguard. It means that a citizen cannot have their citizenship taken away (denaturalised) except through the specific, justifiable legal processes defined **only** within the Constitution itself (e.g., Article 17, which deals with loss of citizenship). This prevents the government from arbitrarily stripping people of their citizenship.

II. Citizen's Right & Personal Impact

Right to Legal Continuity: If you were a Kenyan citizen before August 27, 2010, this article provides the supreme legal assurance that your status, rights, and privileges were never interrupted by the constitutional change.

Protection from Arbitrary Denaturalisation: Your citizenship is not a conditional favour from the government; it is a fundamental right. Clause (3) empowers you to challenge any attempt by the State to revoke or cancel your citizenship unless the revocation strictly follows the narrow, defined constitutional process.

Clarity on Acquisition: If you are a parent of a child, this article provides the framework for understanding that your child's citizenship is secured either through the right to citizenship by birth or, if applicable, through the process of registration.

III. Real-World Example

Scenario: Shortly after the 2010 Constitution came into effect, a government official attempts to deny certain benefits to a citizen who acquired citizenship under the old Constitution, arguing they must "re-register" under the new law.

Action based on Article 13(1): The citizen can challenge this administrative requirement in court, citing Clause (1). The court would be informed that the Constitution explicitly guarantees that their previous status is retained, rendering any new blanket administrative requirement for re-registration unconstitutional.

Result: This article has been crucial in legal rulings concerning dual citizenship and the rights of former citizens who wanted to re-acquire their status. It reinforces the principle that the 2010 Constitution was designed to be expansive and inclusive regarding citizenship, ensuring continuity and legal certainty, especially for those who were citizens before the "effective date."

Citizenship by birth.

14. (1) A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.

2. Clause (1) applies equally to a person born before the effective date, whether or not the person was born in Kenya, if either the mother or father of the person is or was a citizen.

3. Parliament may enact legislation limiting the effect of clauses (1) and (2) on the descendants of Kenyan citizens who are born outside Kenya.

4. A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

5. A person who is a Kenyan citizen by birth and who, on the effective date, has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.

I. Simple Explanation

Article 14 defines citizenship by birth based on parentage (Jus Sanguinis - right of blood) rather than the place of birth (Jus Soli - right of soil), though the latter is also addressed:

Parentage is Key (Clause 1): You are automatically a Kenyan citizen if, at the time you were born, at least one of your parents (mother or father) was a Kenyan citizen. This applies regardless of where you were born in the world (e.g., in Nairobi, London, or New York). This principle ended previous laws that discriminated based on whether the Kenyan parent was the father or the mother.

Historical Correction (Clause 2): This clause is retroactive. It corrects historical injustices by applying the "either parent is a citizen" rule to anyone born before the Constitution's effective date (August 27, 2010). This means children born to Kenyan mothers and non-Kenyan fathers before 2010 are equally recognized as citizens.

Foundlings (Clause 4): Any child found abandoned in Kenya who is under eight years old and whose identity is unknown is legally presumed to be a Kenyan citizen by birth. This prevents children from being stateless.

Regaining Citizenship (Clause 5): This is the foundation for dual citizenship. If you were a Kenyan by birth but lost your citizenship because you acquired another country's citizenship (which was required under the repealed Constitution), you are now entitled to re-apply and regain your Kenyan citizenship.

II. Citizen's Right & Personal Impact

- **Right to Non-Discrimination:** This article ensures that your citizenship rights are equal whether your Kenyan parent is your mother or your father, upholding the constitutional value of equality.
- **Right to Dual Citizenship:** If you are a Kenyan by birth living abroad, you can acquire citizenship in your country of residence without losing your Kenyan status (as detailed in Article 16), and if you lost it previously, you can regain it.
- **Guaranteed Identity:** Your status as a citizen is inherent and unchallengeable by the State as long as you can prove that one of your parents was a Kenyan citizen at the time of your birth, regardless of where you were born.

III. Real World Examples

- **Scenario:** A person born in the US in 1995 to a Kenyan mother and a foreign father was previously denied Kenyan citizenship because the repealed Constitution only allowed citizenship through the father.
- **Action based on Article 14(2):** Upon the promulgation of the 2010 Constitution, this person can immediately apply for and be granted citizenship by birth, citing Clause (2). This clause retroactively applies the new, non-discriminatory rule, confirming their status as if they were always a citizen.
- **Result:** This constitutional change resolved thousands of cases of statelessness and citizenship issues, particularly for children of Kenyan mothers married to foreigners. The government is legally required to issue birth certificates, ID cards, and passports upon production of evidence of the parent's Kenyan citizenship, validating the principle that maternity is equal to paternity in defining citizenship.

Citizenship by registration.

15. (1) A person who has been married to a citizen for a period of at least seven years is entitled on application to be registered as a citizen.

2. A person who has been lawfully resident in Kenya for a continuous period of at least seven years, and who satisfies the conditions prescribed by an Act of Parliament, may apply to be registered as a citizen.

3. A child who is not a citizen, but is adopted by a citizen, is entitled on application to be registered as a citizen.

4. Parliament shall enact legislation establishing conditions on which citizenship may be granted to individuals who are citizens of other countries.

5. This Article applies to a person as from the effective date, but any requirements that must be satisfied before the person is entitled to be registered as a citizen shall be regarded as having been satisfied irrespective of whether the person satisfied them before or after the effective date, or partially before, and partially after, the effective date.

I. Simple Explanation

- **Article 15** defines several categories of people who can become Kenyan citizens through an official application process, known as registration (naturalisation):
By Marriage (Clause 1): If a foreign national has been married to a Kenyan citizen for at least seven years, they have a right (an entitlement) to apply for and receive citizenship, provided they meet other administrative requirements.

- **By Residency (Clause 2):** If a person has lived legally in Kenya for a continuous period of at least seven years and meets other statutory conditions (like good conduct), they can apply for citizenship.
 - **Children of Citizens (Clause 3):** If a child was somehow not automatically granted citizenship by birth (Article 14), but one of their parents is a citizen, they can still be registered as a citizen.
 - **Adopted Children (Clause 4):** A child who is not Kenyan but is legally adopted by a Kenyan citizen is entitled to be registered as a citizen.
- Legislation Required (Clause 5): The practical details and specific rules for all these registration processes must be established in a law passed by Parliament (e.g., the Kenya Citizenship and Immigration Act)

II. Citizen's Right & Personal Impact

- **Right to Family Unity:** This article supports family life by providing a clear path for your non-citizen spouse to become a citizen, allowing them to participate fully in Kenyan society without constant visa applications.
- **Pathway for Residents:** If you are a long-term foreign resident who has invested time and life in Kenya, this offers a legal route to full citizenship, rewarding integration and contribution to the nation.
- **Safeguard for Adopted Children:** If you adopt a non-citizen child, you have the right to ensure they are legally recognised as a Kenyan citizen, securing their future, inheritance, and social benefits.

Dual citizenship.

16. A citizen by birth does not lose citizenship by acquiring the citizenship of another country.

I. Simple Explanation

- **Article 16** is the clause that officially legalizes dual citizenship in Kenya, reversing the previous law that required a Kenyan to lose their citizenship if they acquired another country's nationality.
- **Retention is Guaranteed (Clause 1):** This is the core principle: If you are a Kenyan citizen, you can acquire citizenship in another country (e.g., the United States, United Kingdom, or Canada) without automatically forfeiting or losing your Kenyan citizenship.
- **Definition of Dual Citizen (Clause 2):** It formally defines a person who holds both Kenyan citizenship and the citizenship of another nation as a dual citizen.
- **Regulations and Restrictions (Clause 3):** This gives Parliament the power to create laws (like the Kenya Citizenship and Immigration Act) to manage dual citizenship, specifically to:
 - Require renunciation in certain circumstances for dual citizens residing permanently in Kenya.
 - Restrict dual citizens from holding specific, sensitive public offices (e.g., President, Deputy President, Chief Justice, or certain defense/intelligence roles).

II. Citizen's Right & Personal Impact

- **Right to Hold Multiple Nationalities:** If you are a Kenyan in the diaspora, you can enjoy the rights and benefits of your country of residence (like easier employment or voting) while still retaining all your rights and ties to Kenya, including the right to own land, vote, and get a Kenyan passport.
- **Protection from Forced Choice:** You are protected from being forced to choose between your country of birth/origin (Kenya) and your country of residence, supporting stronger ties with the diaspora.
- **Clarity on Public Office:** While the right is protected, you must be aware that if you aspire to certain high public offices in Kenya, you may be legally required to renounce your foreign citizenship, as Parliament is permitted to make laws restricting these roles.

III. Real-World Example

- **Scenario:** A Kenyan doctor who acquired British citizenship in 2005 (and thus lost his Kenyan status under the old law) returns to Kenya in 2015 and wants to start a business that is restricted to citizens.
- **Action based on Article 16(1) and Article 14(5):** Since Article 16 legalizes dual citizenship, and Article 14(5) entitles a Kenyan by birth who lost their citizenship to regain it, the doctor successfully applies for the reinstatement of their Kenyan citizenship. Upon regaining it, they officially become a dual citizen (Kenyan and British).
- **Result:** The courts have affirmed that the principle of dual citizenship is a fundamental feature of the 2010 Constitution. The only restrictions on dual citizens are those specifically defined by Parliament under Clause 3. For all other rights—voting, owning property, business registration—dual citizens are treated the same as single-citizens, strengthening the nation by tapping into the skills and resources of the diaspora.

Revocation of citizenship.

17. (1) If a person acquired citizenship by registration, the citizenship may be revoked if the person—

a. acquired the citizenship by fraud, false representation or concealment of any material fact;

b. has, during any war in which Kenya was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was knowingly carried on in such a manner as to assist an enemy in that war;

c. has, within five years after registration, been convicted of an offence and sentenced to imprisonment for a term of three years or longer; or

d. has, at any time after registration, been convicted of treason, or of an offence for which—

i.a penalty of at least seven years imprisonment
may be imposed; or

ii.a more severe penalty may be imposed.

(2) The citizenship of a person who was presumed to be a citizen by birth, as contemplated in Article 14 (4), may be revoked if—

a. the citizenship was acquired by fraud, false representation or concealment of any material fact by any person;

b. the nationality or parentage of the person becomes known, and reveals that the person was a citizen of another country; or

c. the age of the person becomes known, and reveals that the person was older than eight years when found in Kenya.

I. Simple Explanation

- **Article 17** sets out very specific, limited legal grounds for the State to take away a person's citizenship. It focuses almost entirely on fraud or legal non-compliance:
- **Citizenship by Registration (Clause 1):** If a person gained Kenyan citizenship through the registration process (Article 15, e.g., by marriage or residency), the State can only take it away if it can prove that the registration was secured by lying, hiding key facts, or fraud. Citizenship by birth is generally considered irrevocable.
- **Dual Citizens (Clause 2):** Parliament can pass laws to revoke the Kenyan citizenship of a dual citizen if they:
 - Used fraud to acquire their other citizenship (Clause 2a).
 - Hold a sensitive Kenyan public office and fail to renounce their other citizenship, if the law requires them to do so (Clause 2b).

II. Citizen's Right & Personal Impact

- **Right to Secure Status** : This is a powerful anti-statelessness provision. It means your citizenship, especially if acquired by birth, is virtually irrevocable. The government cannot take it away arbitrarily or for political reasons.
- **Protection from Arbitrary Revocation;** If you are a citizen by registration, you cannot lose your status unless the State provides clear, convincing evidence that you committed fraud during your application. The burden of proof is on the State.
- **Clarity on Public Office:** If you are a dual citizen holding a high public office, you are explicitly warned that your failure to renounce your other citizenship, if required by an Act of Parliament, can lead to the loss of your Kenyan citizenship.

Legislation on citizenship.

18. Parliament shall enact legislation

- a. prescribing procedures by which a person may become a citizen;
- b. governing entry into and residence in Kenya;
- c. providing for the status of permanent residents;
- d. providing for voluntary renunciation of citizenship;
- e. prescribing procedures for revocation of citizenship;
- f. prescribing the duties and rights of citizens; and
- g. generally giving effect to the provisions of this Chapter.

I. Simple Explanation

Article 18 is a concise but critical authorization clause. It gives the Parliament of Kenya (the National Assembly and the Senate) the specific authority to pass detailed laws that put the principles of citizenship laid out in Articles 12 through 17 into practical effect.

In simple terms, this article means: Enabling Laws (Clause a): Parliament must create laws (like the Kenya Citizenship and Immigration Act) to cover all the administrative and practical details—the "nuts and bolts"—needed to make the constitutional rules on citizenship work smoothly and conveniently (e.g., application forms, fee structures, required documents).

Procedure Defined (Clause b): Parliament has the authority to define the specific procedures (the steps, timelines, and paperwork) for:

Acquisition of citizenship (by registration).

Loss of citizenship (deprivation).

II. Citizen's Right & Personal Impact

Right to Defined Procedure: You are protected from the government creating arbitrary, unwritten rules. This article ensures that all processes related to getting or losing citizenship must be laid out clearly in a **law** passed by your elected representatives in Parliament, ensuring transparency and accountability

Clarity and Predictability: If you are applying for citizenship by registration (Article 15) or worried about losing your citizenship (Article 17), the steps and conditions you must follow are defined in a publicly accessible Act of Parliament, not in secret government directives.

Right to Constitutional Compliance: While Parliament sets the procedures, they must do so in a way that respects and gives effect to the **rights** guaranteed in the Constitution. If the legislation is unfair or unconstitutional, you can challenge it in court.



“Every Kenyan man, woman and child is entitled to a decent and just living. That is a birthright. It is not a privilege.” – J.M Kariuki

Chapter Four—The Bill of Rights

PART 1—GENERAL PROVISIONS RELATING TO THE BILL OF RIGHTS

Rights and fundamental freedoms.

19. (1) The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies.

2. The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.

3. The rights and fundamental freedoms in the Bill of Rights—

- a. belong to each individual and are not granted by the State;
- b. do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
- c. are subject only to the limitations contemplated in this Constitution.

I. Simple Explanation

Article 19 establishes the supreme legal status of the Bill of Rights in Kenya. It has three critical messages:

1. **Foundation of the State (Clause 1):** The rights listed in the Bill of Rights (like freedom of expression, equality, healthcare, etc.) are the **core basis** of Kenyan democracy. They are the standards against which all government policies—whether social, economic, or cultural—must be measured.
2. **Rights are Inherent (Clause 2a):** This is the most profound statement. It means your rights are not given to you by the President, Parliament, or any State organ. They **belong** to you inherently just because you are a human being. The State only exists to protect them.
3. **Cannot Be Limited (Clause 2b & 2c):** Your rights are full and expansive. They **cannot be taken away** or restricted unless the restriction is specifically allowed by the Constitution itself, particularly under the strict conditions of **Article 24** (Limitation of Rights). This ensures that III.

II. Citizen's Right & Personal Impact

- **Right to Inherent Dignity:** You are empowered by the knowledge that your rights are innate, not privileges granted by the government. This fundamentally changes the relationship between the State and the citizen from a master-servant dynamic to a protector-right holder dynamic.
- **Right to Maximum Enjoyment:** When there is ambiguity about a right, the government and the courts must choose the interpretation that allows you to enjoy that right to the greatest extent possible (Clause 2c). Any limitation on your rights is viewed with extreme suspicion.
- **Framework for Policy:** You can challenge any government policy (on housing, education, or employment) if it fails to align with the framework of the Bill of Rights. For example, a policy that causes people to lose their social or economic rights can be

III. Real-World Example

- **Scenario:** A County Government decides to clear out a market without giving the traders an alternative location or adequate notice, justifying it as a necessary economic policy decision.
- **Action based on Article 19:** The affected traders, in court, would cite Article 19 (in combination with Article 43 on socio-economic rights and Article 47 on fair administrative action). They would argue that the County's economic policy violates the Bill of Rights, which is the "framework for social, economic and cultural policy" (Clause 1). The rights to dignity, equality, and trade are being limited unfairly.
- **Result:** Courts have used Article 19 as the foundation to tell the State that even valid policy goals must be achieved in a way that minimally limits fundamental rights and freedoms. In similar cases, courts have compelled the government to halt demolitions or policies until a humane and rights-compliant alternative (like proper notice or relocation) is provided, reinforcing that the Bill of Rights must guide all State actions.

Application of Bill of Rights.

20. (1) The Bill of Rights applies to all law and binds all State organs and all persons.

2. Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

3. In applying a provision of the Bill of Rights, a court shall—

a. develop the law to the extent that it does not give effect to a right or fundamental freedom; and

b. adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

4. In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—

- a. the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and
- b. the spirit, purport and objects of the Bill of Rights.

5. In applying any right under Article 43, if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the following principles—

- a. it is the responsibility of the State to show that the resources are not available;
- b. in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and
- c. the court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

I. Simple Explanation

Article 20 is the guide on **how to read and use** the Bill of Rights, targeting judges, lawyers, and policy-makers.

1. **Universal Binding (Clause 1):** The rights bind **everyone**—the government (State organs) and private individuals and organizations (**all persons**). This means you can sue a private company or person for violating your rights (e.g., discrimination) in addition to suing the government.
2. **Maximum Enjoyment (Clause 2):** This repeats the promise from Article 19: rights must be enjoyed as fully as possible.
3. **Judicial Mandate (Clause 3):** This is the heart of the article for courts:
 - **Develop the Law:** If an existing law (statute, common law) is weak or insufficient to protect a right, the court has a duty to **change or develop** that law to give full effect to the right (Clause 3a).
 - **Favour the Right:** When a right can be interpreted in several ways, the court must choose the interpretation that is **most beneficial** to the person claiming the right (Clause 3b).
4. **Promote Core Values (Clause 4):** All interpretation must advance the foundational values of Kenya's democracy, particularly **human dignity, equality, equity, and freedom**, and must respect the overall **spirit** and purpose of the Bill of Rights (i.e., making life better for Kenyans).

II. Citizen's Right & Personal Impact

- **Right to Horizontal Application:** Your rights protect you not only from the government but also from abuse by private entities. You can challenge a private employer, a landlord, or a private school if their actions violate your rights (e.g., discriminating against you based on tribe or gender).
- **Right to Favourable Interpretation:** If your case reaches court, this article ensures that the judges are constitutionally compelled to be your ally in interpreting the law. They must find the meaning that best enforces your fundamental rights.
- **Right to Legal Evolution:** If an old Kenyan law is found to violate a right, you can ask the court to either strike it down or "develop" it to align with the Bill of Rights, leading to progressive legal changes that improve citizen protection.

III. Real-World Example

- **Scenario:** A private company refuses to hire a qualified applicant purely because the applicant belongs to a minority ethnic group, violating the right to non-discrimination and equality.
- **Action based on Article 20(1):** The applicant can sue the private company. The court uses Article 20(1) to confirm that the Bill of Rights binds all persons (including the private company) and that the private company is therefore subject to the constitutional prohibition on discrimination (Article 27).
- **Result:** The courts have repeatedly affirmed this horizontal application principle. They have used Article 20(3)(b) to interpret existing employment laws in a way that most favours the enforcement of the right to equality, compelling the company to stop discriminatory practices and potentially offering compensation to the victim.

Implementation of rights and fundamental freedoms.

21. (1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

2. The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

3. All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children,

youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

4. The State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

I. Simple Explanation

Article 21 turns the rights of the citizen into an active mandate for the government. It has three main responsibilities for the State:

Fundamental Duty (Clause 1): Every part of the government, at every level (national and county), has a comprehensive duty to not just respect your rights (by not violating them), but also to actively protect, promote, and fulfil them. This means the government must be proactive in ensuring you can enjoy your rights.

Progressive Realisation (Clause 2): For the socio-economic rights (like health, housing, education, and water, listed in Article 43), the government acknowledges it might not be able to provide everything immediately. It is therefore required to take steps—through laws and budgets—to progressively realise these rights over time. The key is that the State must show it is always moving forward, not backward, in fulfilling these rights.

Vulnerable Groups (Clause 3): All government institutions must prioritize and specifically tailor their services and policies to address the unique needs of vulnerable and marginalized groups. This requires government programs to be inclusive and equitable, ensuring that those who historically struggled to access rights are now actively supported.

II. Citizen's Right & Personal Impact

- **Right to Active Fulfillment:** This is the basis for demanding that the government does more than simply avoid interfering with your life. You can demand that the government create systems (like police protection, healthcare infrastructure, or a functioning justice system) that actively fulfil your rights.
- **Right to Demand Budgeting:** If the government claims it can't afford a service (like better healthcare), you can use this article to hold them accountable. You can challenge the government to show its progressive plan and budget allocation aimed at ultimately meeting the full realization of Article 43 rights.
- **Right to Targeted Services:** If you belong to a vulnerable group (e.g., a person with a disability or an older person), you have a constitutional right to demand that public service delivery is specifically adapted to meet your needs (e.g., accessible buildings, targeted development funds, special protections).

III. Real-World Example

- **Scenario:** A human rights organization sues the government over a lack of basic healthcare facilities in a remote, marginalized county, citing a violation of the right to health (Article 43).
- **Action based on Article 21(2):** The government cannot simply say "we don't have money." Instead, the court will require the government to demonstrate that it is

meeting its duty of progressive realisation. This means presenting evidence of a clear, reasonable, and budgeted plan to construct, staff, and supply the necessary hospitals and clinics in that area within a defined timeframe.

- **Result:** Courts have used Article 21 to issue structural interdicts, ordering the State to allocate funds, enact new regulations, or create specific policies to address systemic failures in providing social and economic rights, especially for marginalized communities (Clause 3). This principle shifts judicial focus from merely stopping bad government action to compelling good government action.

Enforcement of Bill of Rights.

22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

2. In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

- a. a person acting on behalf of another person who cannot act in their own name;
- b. a person acting as a member of, or in the interest of, a group or class of persons;
- c. a person acting in the public interest; or
- d. an association acting in the interest of one or more of its members.

3. The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—

- a. the rights of standing provided for in clause (2) are fully facilitated;
- b. formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
- c. no fee may be charged for commencing the proceedings;
- d. the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and

e. an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

4. The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.

I. Simple Explanation

Article 22 is the key that unlocks the court system for protecting rights.

1. **Direct Access (Clause 1):** It gives **every person** the immediate right to go to court if any of their constitutional rights are violated or even **threatened** (i.e., you don't have to wait for the damage to occur).
2. **Expanded Standing (Clause 2):** This clause radically broadens who can sue. You do not have to be the person directly affected. This allows for **public interest litigation**, meaning:
 - You can sue for someone who can't (e.g., a guardian for a child).
 - You can sue on behalf of a large **group or class** of people (class action).
 - You can sue purely in the **public interest** (e.g., an environmental activist suing over pollution that affects everyone).
3. **Facilitating Procedure (Clause 3):** This requires the Chief Justice to create simple, fast, and accessible court rules to make it easy for people to file these rights cases.
4. **Judicial Power (Clause 4):** The court is given wide-ranging power to issue any remedy ("appropriate relief") needed to fix the violation, including ordering the government to pay **compensation** (damages), stopping a planned action (**injunction**), or officially declaring what the rights are (**declaration of rights**).

II. Citizen's Right & Personal Impact

- **Right to Judicial Redress:** This is your ultimate safeguard. If the government or a private entity violates your rights, you have a direct, non-negotiable path to justice through the High Court.
- **Empowerment of Activists:** As a citizen, you can become an activist who sues on behalf of marginalized groups, the poor, or the environment, knowing that the Constitution explicitly supports and grants you the standing to do so.
- **Right to Effective Remedy:** If you win your case, the court has the authority to issue a remedy that actually solves the problem, whether that is money, an order forcing the government to act, or stopping a harmful policy.

III. Real-World Example

- **Scenario:** A human rights organization notices that thousands of children in an informal settlement have been out of school for months because the government failed to provide the constitutionally guaranteed free primary education. The parents are too poor and disorganized to sue individually.
- **Action based on Article 22(2):** The human rights organization institutes a case (a Constitutional Petition) against the government. They sue, acting "in the interest of, a group or class of persons" (the children) and "in the public interest".
- **Result:** Citing the violation of the right to education (Article 53) and using its power under Article 22(4), the High Court issues a conservatory order directing the Ministry of Education to immediately implement measures to enrol the children and provide the necessary resources. The court may also issue a declaration of rights, formally stating that the children's right to education was violated by the State's inaction. This article has been instrumental in landmark public interest cases on environmental protection, health care access, and police accountability.

Authority of courts to uphold and enforce the Bill of Rights.

23. (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

2. Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

3. In any proceedings brought under Article 22, a court may grant appropriate relief, including—

- a. a declaration of rights;
- b. an injunction;
- c. a conservatory order;
- d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- e. an order for compensation; and
- f. an order of judicial review.

I. Simple Explanation

Article 23 identifies the primary court responsible for protecting rights and reconfirms the court's broad remedial power.

1. **High Court Power (Clause 1):** The **High Court** is the primary, constitutional court for all human rights cases. Any citizen seeking legal redress (a remedy) for a violation of the Bill of Rights must start their case here (unless Parliament specifies otherwise).
2. **Subordinate Courts (Clause 2):** Parliament is required to pass a law to give some limited authority (original jurisdiction) to **Subordinate Courts** (like the Magistrates Courts) to handle human rights issues in minor or specific cases. This helps bring justice closer to the people and reduces the burden on the High Court.
3. **Remedies Confirmed (Clause 3):** This clause repeats and expands on the powerful remedies introduced in Article 22(4). It gives the High Court comprehensive power to issue any order necessary, including:
 - **Striking down an unconstitutional law** (Declaration of invalidity).
 - **Reviewing and reversing bad administrative decisions** (Judicial Review).
 - **Stopping immediate harm** (Conservatory Order/Injunction).
 - **Ordering monetary payment** (Damages/Compensation).

II. Citizen's Right & Personal Impact

Right to a Constitutional Forum: You know exactly which court has the authority and specialization to handle your constitutional rights case—the High Court. You have guaranteed access to this top court for redress.

Right to Local Justice: The requirement for Parliament to delegate some power to Subordinate Courts means that access to justice for human rights issues will eventually be decentralized, making it cheaper and faster to get remedies at the local level.

Guaranteed Effective Remedy: If you win your case, the court's power under Clause (3) ensures that the government cannot ignore the ruling. The court can issue binding orders that directly change policy, invalidate laws, or award you compensation.

III. Real-World Example

- **Scenario:** An activist group challenges a new traffic law passed by Parliament, arguing that the fines are so excessive they violate the socio-economic rights of low-income earners (Article 43) and are unconstitutional.
- **Action based on Article 23(1):** The activist group files a petition directly in the High Court, citing Article 23(1) as the court's authority to hear the matter.
- **Result:** If the High Court agrees that the law violates the Bill of Rights, it uses its power under Article 23(3)(a) to issue a **"declaration of invalidity"** for the infringing sections of the law, effectively nullifying those parts and ordering Parliament to amend the legislation. This power of **constitutional review** is the High Court's ultimate safeguard against governmental overreach.

Limitation of rights and fundamental freedoms.

24. (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- a. the nature of the right or fundamental freedom;
- b. the importance of the purpose of the limitation;
- c. the nature and extent of the limitation;
- d. the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- e. the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

2. Despite clause (1), a provision in legislation limiting a right or fundamental freedom

a. in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;

b. shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and

c. shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.

3. The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.

4. The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

5. Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service—

- a. Article 31—Privacy;
- b. Article 36—Freedom of association;
- c. Article 37—Assembly, demonstration, picketing and petition;
- d. Article 41—Labour relations;
- e. Article 43—Economic and social rights; and
- f. Article 49—Rights of arrested persons.

I. Simple Explanation

Article 24 is the **Gatekeeper** for all rights. It places strict constitutional conditions on the government whenever it attempts to restrict any right guaranteed in the Bill of Rights (except the non-derogable rights listed in Article 25).

1. **Strict Test (Clause 1):** The government can only limit a right if three conditions are met:
 - o The limitation must be established by a **Law** (not just a Ministerial circular or police order).
 - o The law must be **Reasonable and Justifiable** in a free and democratic society. This is a tough test—it means the government must prove that the public benefit of the limitation outweighs the harm it causes to the individual's right.
2. **Clarity and Specificity (Clause 2):** Any law that limits a right must be crystal clear. It must specifically state **which right** is being limited and **how much** (the nature and extent) the right is being limited. Vague laws that might limit rights by accident are automatically invalid.

II. Citizen's Right & Personal Impact

- **Protection from Arbitrary Limits:** Your rights cannot be limited on the whim of a government official. You have the right to demand that any restriction on your freedom (like a curfew, a ban on protests, or censorship) must be backed by a valid, specific, and demonstrably justifiable law.
- **Right to Challenge Limits:** If you feel a law (e.g., a cyber-crime law) restricts your right to freedom of expression (Article 33), you are empowered to challenge that law in the High Court. The burden of proof is on the government to convince the court that the restriction is both reasonable and necessary.
- **Right to Legislative Transparency:** When Parliament debates a law, it cannot hide potential rights limitations. The law must transparently state its restrictive effect, giving you and your representatives a chance to scrutinize it.

III. Real-World Example

- **Scenario:** The police implement a strict, blanket curfew across an entire county in response to localized crime, severely restricting the right to movement (Article 39) and assembly (Article 37) for all residents.
- **Action based on Article 24:** A resident or human rights group challenges the curfew in the High Court. They argue that the restriction is not **reasonable and justifiable** (Clause 1) because a blanket, indefinite curfew across a large area is disproportionate to localized crime and that the objective could be achieved through less restrictive means (e.g., increased localized patrols).
- **Result:** Courts often use a **proportionality test** based on Article 24. They ask: (1) Is the restriction necessary? (2) Is the restriction rationally connected to the objective? (3) Does the restriction impair the right as little as possible? (4) Does the harm caused to the right outweigh the benefit? In many cases, courts have struck down broad or vague restrictions, compelling the State to find targeted, rights-compliant measures, thereby protecting fundamental freedoms.

Fundamental Rights and freedoms that may not be limited.

25. Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited—

- a. freedom from torture and cruel, inhuman or degrading treatment or punishment;
- b. freedom from slavery or servitude;
- b. the right to a fair trial; and
- b. the right to an order of *habeas corpus*.

I. Simple Explanation

Article 25 is the Absolute Guarantee clause. It explicitly states that four fundamental rights are so important that they are non-derogable; they cannot be restricted, suspended, or limited by any law, any State organ, or under any circumstances, including a state of emergency (which is detailed in Article 58).

The four rights that can **never** be taken away are:

1. **Freedom from Torture:** You can never be subjected to cruel, inhuman, or degrading treatment or punishment.
2. **Freedom from Slavery or Servitude:** You cannot be owned, forced into labour, or forced to work against your will.
3. **Right to Habeas Corpus:** If you are arrested and detained, you have the absolute right to have the State produce you physically before a court to determine the legality of your detention. This prevents secret or indefinite detention.
4. **Freedom from Imprisonment for Debt:** You cannot be jailed simply because you owe money or are unable to pay a debt.

II. Citizen's Right & Personal Impact

Absolute Protection: This provides the ultimate shield for your physical and mental integrity. Even in the worst case (e.g., a state of war or terrorism investigation), the State cannot legally resort to torture or forced disappearance.

Protection of Liberty: The right to **Habeas Corpus** is your personal guarantee against arbitrary State power. If you or a loved one is missing after being taken by the police, you can immediately file a court application to force the State to reveal their whereabouts and justify the arrest.

Protection from Criminalization of Poverty: This ensures that civil disputes over money do not become criminal matters resulting in jail time. It protects the basic human right to dignity even when facing financial hardship

III. Real-World Example

- **Scenario:** Following a major terrorist attack, the State declares a state of emergency and passes temporary laws that allow security forces to hold suspects indefinitely without charge or trial, effectively suspending other rights.
- **Action based on Article 25:** A lawyer representing a detained suspect file an application for a Writ of **Habeas Corpus** to the High Court. They argue that although other rights might be limited during an emergency, Article 25 explicitly states that the right to an order of habeas corpus shall not be limited.
- **Result:** The court, citing Article 25(c), would be compelled to immediately order the State to produce the detained person and show proof of a valid, legal basis for detention. Any attempt by the government to indefinitely hold a person without legal justification is an immediate and unconstitutional violation of this core non-derogable right.

PART 2—RIGHTS AND FUNDAMENTAL FREEDOMS

Right to life.

26. (1) Every person has the right to life.

2. The life of a person begins at conception.

3. A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.

4. Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

I. Simple Explanation

Article 26 establishes the most fundamental of all rights: the right to life, and it defines the boundaries of this right.

1. **Fundamental Guarantee (Clause 1):** Every person has the right to exist and live.
2. **Start of Life (Clause 2):** Life, for the purpose of the Constitution, begins at **conception**. This provides the legal protection for the unborn, setting a high standard for protecting life from its earliest stage.
3. **Deprivation of Life (Clause 3):** No one can be deliberately killed by the State or anyone else, except in limited and legally authorized situations (e.g., in self-defence, preventing a fleeing felon, or, historically, execution after a lawful death sentence, though the death penalty is currently interpreted non-mandatory).
4. **Abortion Exception (Clause 4):** The Constitution generally prohibits abortion but provides **three strict exceptions** where a termination is permitted by a qualified health professional:
 - When it is required for **emergency medical treatment**.
 - When the continuation of the pregnancy endangers the **life or health** of the mother.
 - When allowed by another specific **written law**.

II. Citizen's Right & Personal Impact

Right to Exist: You have the highest protection against unlawful killing by individuals or agents of the State. The State is legally obliged to protect your life and investigate any threats to it.

Protection of Unborn Life: This clause provides a basis for demanding government policies and legal frameworks that protect the **unborn child** and provide support for maternal and prenatal healthcare.

Right to Maternal Health: The abortion clause ensures that a mother's **life and health** is protected and prioritized when facing a medical emergency related to pregnancy. This is a critical provision that guarantees necessary healthcare interventions.

III. Real-World Example

Scenario: A family member is shot by a police officer who claims the person was resisting arrest, but evidence suggests the killing was excessive and unnecessary.

Action based on Article 26(3): The family files a petition in the High Court for compensation and a declaration that the right to life was violated. The State is compelled to prove that the deprivation of life was strictly authorised by law and that the force used was absolutely necessary, reasonable, and proportional (e.g., using the rules of self-defence).

Result: The courts often rule that life may not be taken even to effect an arrest unless strictly unavoidable. They have awarded substantial damages to families for the unlawful killing of a relative, affirming that the right to life is paramount. Furthermore, Article 26(4) has been interpreted by the High Court to require the Ministry of Health to provide clear guidelines and training to health professionals to ensure that safe, legal abortions are available under the constitutional exceptions, safeguarding women's lives.

Equality and freedom from discrimination.

27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

6. To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative

action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

7. Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

8. In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

I. Simple Explanation

Article 27 is the constitutional guarantee that all people are treated equally and fairly.

1. **Equality Before the Law (Clause 1):** Everyone, regardless of position or wealth, stands the same before the law. The law must apply to everyone equally and provide the same protection and benefits to all citizens.
2. **Prohibition of Discrimination (Clauses 4 & 5):** The State (Clause 4) and private individuals/entities (Clause 5) are strictly forbidden from discriminating against any person. The article lists a broad, non-exhaustive list of 17 grounds on which discrimination is illegal (e.g., race, sex, disability, age, religion, ethnic origin, etc.).
3. **Gender Equality (Clauses 3 & 8):** This specifically guarantees **equal treatment for women and men** in all areas of life (political, economic, etc.). Clause (8) is the famous **two-thirds gender rule**, which mandates that no more than two-thirds of members in any elected or appointed government body can be of the same gender (aimed at boosting women's representation).
4. **Affirmative Action (Clause 6):** To correct historical and ongoing unfairness, the State is required to take active steps, including passing laws for **affirmative action** (or positive discrimination). This means creating special programs and policies (like quotas or targeted funding) to actively help groups (like marginalized communities or women) who have suffered from past or present discrimination.

II. Citizen's Right & Personal Impact

Right to Non-Discrimination You are protected from being unfairly treated, denied services, or excluded from opportunities (in employment, education, housing, etc.) based on any of the listed grounds. You can sue the government or a private entity for discrimination.

Right to Equal Representation If you are a woman, this clause provides the constitutional basis for demanding greater representation in Parliament, County Assemblies, and all government appointments.

Right to Benefit from Corrective Measures If you belong to a marginalized group (e.g., a person with a disability or a minority tribe), you have the right to access and benefit from special government programs and funding that are designed to correct historical injustices and disadvantages.

III. Real-World Example

Scenario: A company advertises a job and explicitly states that only applicants under the age of 30 will be considered, effectively excluding older, qualified individuals.

Action based on Article 27: An older applicant who was denied an interview can file a case, arguing that the company is discriminating on the basis of age, which is explicitly forbidden by Article 27(4) and (5). Since the Bill of Rights binds all persons (Article 20), the private company is subject to the anti-discrimination rule.

Result: Courts have used Article 27 to strike down various discriminatory laws and practices. In cases challenging gender bias in political appointments, the High Court has consistently affirmed that Clause (8) is a mandatory constitutional requirement, compelling the government to review and revise appointment lists that fail to adhere to the two-thirds rule.

Human dignity.

28. Every person has inherent dignity and the right to have that dignity respected and protected.

I. Simple Explanation

Article 28 is the shortest article in the Bill of Rights but carries the greatest moral weight. It confirms two crucial facts:

1. **Inherent Dignity:** Every single person possesses worth and value simply by being human. This dignity is **inherent**—it is not granted by the State, and it cannot be earned or lost.
2. **Right to Protection:** Because dignity is inherent, you have an absolute **right** to demand that the State and all other persons **respect and protect** it. No policy, law, or action should humiliate, degrade, or diminish a person's worth.

This article serves as the underlying philosophy for every other right (like freedom from torture, the right to health, and the right to fair hearing).

II. Citizen's Right & Personal Impact

- **Right to Respect:** Any act by a public officer (e.g., police officer, civil servant) that is demeaning, humiliating, or grossly disrespectful toward you—such as verbal abuse, harassment, or public shaming—is a direct constitutional violation of your human dignity.
- **Foundation for All Rights:** When your right to housing, health, or food is violated, Article 28 is also violated. For example, living in inhumane conditions or being denied necessary medical care is viewed as an affront to your inherent human dignity.
- **Protection from Degradation:** This article gives you the power to challenge laws or practices that are not necessarily physical torture but are severely degrading (e.g., forced public nudity, inhumane prison conditions, or being left without basic sanitation).

III. Real-World Example

- **Scenario:** A local police officer detains a suspected petty thief and, instead of taking them to the station, ties them to a lamppost in the town center for several hours as a form of public punishment and humiliation.
- **Action based on Article 28:** The suspect or a public interest group immediately files a constitutional petition. They argue that the act is a clear violation of **human dignity** (Article 28) and is also cruel, inhuman, and degrading treatment (Article 29).
- **Result:** The courts have consistently used Article 28 to strike down actions that inflict unnecessary shame or humiliation. In such cases, the court would issue a declaration that the officer's action violated the suspect's dignity, order compensation (damages) for the violation, and compel the Inspector-General of Police to take disciplinary action against the officer. The court's interpretation of dignity under Article 28 sets a high standard for how the State must treat all persons, even those suspected of crimes.

Freedom and security of the person.

29. Every person has the right to freedom and security of the person, which includes the right not to be—

- a. deprived of freedom arbitrarily or without just cause;
- b. detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;
- c. subjected to any form of violence from either public or private sources;
- d. subjected to torture in any manner, whether physical or psychological;
- e. subjected to corporal punishment; or
- f. treated or punished in a cruel, inhuman or degrading manner.

I. Simple Explanation

Article 29 is a comprehensive protection against physical and psychological abuse, and illegal restraint of movement. It means no one can be subjected to:

1. **Arbitrary Detention (Clauses a & b):** You cannot be arrested or detained without a **lawful reason** (just cause) and a legal process. The State cannot lock you up indefinitely without bringing you before a court (detention without trial).
2. **Violence and Abuse (Clauses c, d, & e):** You are protected from all forms of physical and psychological harm. This includes violence from the police (public source) or from individuals (private source, like domestic violence). It prohibits **torture** (which is also non-derogable under Article 25) and any punishment that is **cruel, inhuman, or degrading**.
3. **Forced Experimentation (Clause f):** You cannot be forced to participate in any medical or scientific testing or research without first giving your **free, prior, and informed consent**.

II. Citizen's Right & Personal Impact

- **Right to Physical Security:** This article empowers you to demand police protection from **domestic violence** or **private attacks**. It places a duty on the State to protect you from harm, regardless of who the perpetrator is.
- **Protection from Police Misconduct:** If you are arrested, you cannot be subjected to beatings, stress positions, or psychological abuse. Any confession obtained through **torture** is constitutionally inadmissible in court.
- **Right to Informed Choice:** Your body and health decisions are your own. No doctor, scientist, or government can use you in a medical trial without fully informing you of the risks and obtaining your voluntary agreement.

III. Real-World Example

- **Scenario:** A suspect is arrested and held by police in custody for several days without being taken to court and is repeatedly beaten by officers to extract a confession.
- **Action based on Article 29:** The suspect's lawyer files a petition to the High Court, citing violations of the rights not to be **deprived of freedom arbitrarily** (29a), not to be **detained without trial** (29b), and not to be subjected to **torture** (29d) and **cruel, inhuman, or degrading treatment** (29e).
- **Result:** The courts would immediately order the police to produce the suspect and justify the detention. If torture or illegal detention is proven, the court would not only order the suspect's release but would also award **substantial compensation (damages)** against the State for the grave violation of personal security. This article is the foundation for police accountability and safeguarding the rights of all detainees.

Slavery, servitude and forced labour.

30. (1) A person shall not be held in slavery or servitude.

(2) A person shall not be required to perform forced labour.

I. Simple Explanation

Article 30 is an absolute prohibition on all forms of modern and historical exploitation, guaranteeing every person the right to control their own body and labour.

1. **Slavery and Servitude (Clause 1):** This means no person can be treated as property, owned by another person (**slavery**), or forced to work for another under conditions of coercion or long-term dependency (**servitude**), which often includes debt bondage or exploitative domestic work.
2. **Forced Labour (Clause 2):** This prohibits making any person work against their will or under threat of penalty. It is a critical safeguard against forced conscription, trafficking, or economic exploitation disguised as employment.

Note: The law generally makes exceptions for work done as part of a lawful sentence handed down by a court (e.g., community service or prison labour) or work done during a state of emergency that is required of all citizens. However, even this labour must be regulated and humane.

II. Citizen's Right & Personal Impact

- **Right to Control Labour:** You have the absolute right to choose your employment and to leave it. You cannot be coerced, trafficked, or held against your will to perform any kind of work, regardless of compensation.
- **Protection from Exploitation:** This article protects you from illegal practices like **debt bondage**, where you are forced to work indefinitely to repay an impossible debt, and from various forms of **human trafficking** and forced domestic work.
- **Right to Personal Liberty:** This freedom ensures your physical liberty is tied to the choice of your livelihood, and no one, public or private, can claim ownership or perpetual control over your person or service.

III. Real-World Example

Scenario: A recruitment agency promises a person a well-paying job abroad but confiscates their passport upon arrival and forces them to work 16-hour days with no pay, threatening them with deportation if they refuse.

Action based on Article 30: The victim or an anti-trafficking organization can sue the recruitment agency and potentially the government (for failure to protect). They would cite the severe violation of the right to **freedom from slavery, servitude, and forced labour** (Clause 1 and 2).

Result: Article 30 is the constitutional foundation for all Kenyan laws against **human trafficking**. The courts would declare the actions of the agency unconstitutional and issue immediate orders to repatriate the victim, confiscate the perpetrator's assets, and award substantial compensation (damages). This constitutional provision empowers the State to treat modern slavery as a serious criminal and rights violation, not just a labour dispute.

Privacy.

31. Every person has the right to privacy, which includes the right not to have—

- a. their person, home or property searched;
- b. their possessions seized;
- c. information relating to their family or private affairs unnecessarily required or revealed; or
- d. the privacy of their communications infringed.

I. Simple Explanation

Article 31 guarantees the right to be left alone and protects your personal space, home, property, and communications from unwarranted interference by the State or any other person.

This right includes protection from:

1. **Unlawful Search (Clauses a & b):** The police or government agents cannot legally search your body, your house, or your belongings, nor can they seize your property, without a **warrant** (court order) or other specific legal justification (usually related to a crime in progress or immediate danger).
2. **Confidentiality (Clause c):** You have the right to keep your private family matters and personal information confidential. The government or other institutions should

not unnecessarily demand or reveal this information (e.g., your health status, sexual orientation, or personal history).

3. **Communication Security (Clause d):** Your letters, phone calls, text messages, and digital communications (emails, chats) are private. They cannot be illegally monitored, intercepted, or read without a strict legal process.

II. Citizen's Right & Personal Impact

Right to Secure Home: Your home is a legal sanctuary. You can demand that police or administrative officials respect your privacy and not enter or search your residence without a valid, legally acquired search warrant.

Right to Data Protection: When you use government services (like healthcare or tax filing) or private services (like banking or social media), this article is the foundation for demanding that your personal data be protected, securely stored, and not shared unnecessarily.

Protection from Wiretapping: Your digital and verbal communications are protected. This ensures that the State cannot engage in mass, warrantless surveillance of citizens' phone calls or online activity.

III. Real-World Example

- **Scenario:** A government agency begins a project to collect and centralize the biometric data (fingerprints, DNA, facial recognition) of all citizens for identity management purposes without passing a specific law detailing how the data will be protected, used, and secured.
- **Action based on Article 31:** A human rights organization challenges the program in court, arguing it violates the right not to have "information relating to their family or private affairs unnecessarily required or revealed" (Clause c). They also argue it violates the right to privacy by allowing potential government overreach.
- **Result:** The courts have repeatedly affirmed that the collection and storage of sensitive biometric data constitutes an infringement on the right to privacy. Citing Article 31, the High Court has required the government to halt or revise such projects, compelling Parliament to enact comprehensive Data Protection laws that regulate the collection, processing, and use of personal data, thus ensuring the State respects the citizen's privacy in the digital age.

Freedom of conscience, religion, belief and opinion.

32. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

2. Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.

3. A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion.

4. A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion.

I. Simple Explanation

Article 32 ensures that your inner life—what you think, believe, and worship—is absolutely free from State coercion or interference.

1. **Inner and Outer Freedom (Clauses 1 & 2):** You have the right to choose any religion, belief, or philosophical opinion, or choose none at all (Clause 1). Furthermore, you have the right to express and live out that belief openly, whether alone or in a group, in private or public, through **worship, teaching, and practice** (Clause 2). This includes taking time off for religious holy days.
2. **Freedom from Compulsion (Clause 3):** The State (or any other person) cannot force you to do anything that goes against your religious or sincerely held belief.
3. **Protection on Oath (Clause 4):** If your religion or belief forbids taking an oath (a formal promise invoking a deity), you cannot be forced to take one, and can instead use an **affirmation** (a solemn declaration).

II. Citizen's Right & Personal Impact

Right to Practice: You are free to worship, establish a place of worship, wear religious attire (dress), and observe religious holidays, and you are protected from persecution or discrimination for doing so.

Right to Non-Conformity: If a law requires you to do something that violates your conscience (e.g., compulsory vaccination for a person with strong religious objections, or taking a life oath), you have the right to seek exemption, provided the exemption does not severely undermine public order or other fundamental rights.

Right to Identity: Your belief, conscience, and opinion are constitutionally protected, ensuring that your core values and philosophy are respected in public life.

III. Real-World Example

- **Scenario:** A student belonging to a minority religion is required by their public school to attend a religious instruction class from a different, majority religion, against the wishes of the parent and the student's conscience.
- **Action based on Article 32(3):** The parent files a petition against the school board, citing the violation of the right not to be **compelled** to act contrary to their belief or religion.
- **Result:** The courts have repeatedly affirmed that public institutions cannot compel religious instruction or observance against a person's faith. The school would be ordered to provide the student with a non-discriminatory alternative or an exemption, ensuring that the student's **freedom of conscience and belief** is respected. This article guarantees a diverse and tolerant society where individual religious choices are respected in all spheres, including public education and court proceedings (where affirmations are accepted instead of oaths).

Freedom of expression.

33. (1) Every person has the right to freedom of expression, which includes—

- a. freedom to seek, receive or impart information or ideas;
 - b. freedom of artistic creativity; and
 - c. academic freedom and freedom of scientific research.
2. The right to freedom of expression does not extend to—
 - a. propaganda for war;
 - b. incitement to violence;
 - c. hate speech; or
 - d. advocacy of hatred that—
 - i. constitutes ethnic incitement, vilification of others or incitement to cause harm; or
 - ii. is based on any ground of discrimination specified or contemplated in Article 27 (4).
3. In the exercise of the right to freedom of expression, every person shall respect the rights and reputation of others.

I. Simple Explanation

Article 33 guarantees the right to speak, write, and communicate freely. It has two parts: what you **can** do and what you **cannot** do.

1. **Guaranteed Freedoms (Clause 1):** You are free to express yourself through any medium (speech, writing, art, social media). This includes the right to **seek** (ask for), **receive** (be given), and **impart** (share) information. It also specifically protects **artistic creativity** and **academic freedom** for researchers and educators.
2. **Explicit Limitations (Clause 2):** Freedom of expression is not absolute. The Constitution explicitly prohibits speech that is harmful or undermines national cohesion. Specifically, you are **not protected** if your expression amounts to:
 - **Incitement** (calling people to violence or hatred).
 - **Propaganda for war.**
 - **Hate Speech or Advocacy of Hatred** against groups based on ethnicity, religion, or any of the discrimination grounds listed in Article 27.

II. Citizen's Right & Personal Impact

Right to Accountability: You have the freedom to criticize the government, expose corruption, and express unpopular opinions without fear of arrest or censorship (as long as it remains within legal bounds). This is essential for holding leaders accountable.

Protection of Creativity: If you are an artist, writer, musician, or academic, your right to create, teach, and research without undue government interference is constitutionally protected.

Protection from Hate: While others can speak freely, the law protects you and your community from being targeted by speech that encourages hatred, violence, or ethnic tension. You can report and seek legal action against individuals spreading hate speech.

III. Real-World Example

- **Scenario:** A politician makes a public statement during a rally that is perceived as promoting ethnic hatred against a rival community to incite political violence.
- **Action based on Article 33(2):** The National Cohesion and Integration Commission (NCIC) or a concerned citizen can petition the High Court, or the politician can face criminal charges. The action is based on the argument that the speech clearly falls outside the protection of freedom of expression because it constitutes incitement to violence or hate speech that advocates hatred based on ethnic grounds (Clause 2d).
- **Result:** The courts have repeatedly affirmed that the exceptions in Article 33(2) are constitutional limits on free speech. They have convicted individuals and fined media houses that allowed the spread of hate speech, ruling that while criticism is allowed, speech that directly threatens national unity or public order is not protected and can be punished. This demonstrates the constitutional balance between individual freedom and the collective responsibility for peace and cohesion.

Freedom of the media.

34. (1) Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2).

2. The State shall not—

a. exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or

b. penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

3. Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that—

a. are necessary to regulate the airwaves and other forms of signal distribution; and

b. are independent of control by government, political interests or commercial interests.

4. All State-owned media shall—

a. be free to determine independently the editorial content of their broadcasts or other communications;

b. be impartial; and

c. afford fair opportunity for the presentation of divergent views and dissenting opinions.

5. Parliament shall enact legislation that provides for the establishment of a body, which shall—

a. be independent of control by government, political interests or commercial interests;

b. reflect the interests of all sections of the society; and

c. set media standards and regulate and monitor compliance with those standards.

I. Simple Explanation

Article 34 is the constitutional guarantee that the media can operate freely as the "fourth estate," essential for a transparent democracy.

- 1. Guaranteed Independence (Clause 1):** All media—newspapers (print), television/radio (electronic), and online news sources—are guaranteed freedom and independence from government interference.
- 2. No State Control (Clause 2):** The government cannot control or interfere with the content, production, or distribution of any broadcast or publication (Clause 2a). Furthermore, the State cannot punish journalists or media houses simply because it dislikes the opinion, view, or content they publish (Clause 2b).
- 3. Independent Regulation (Clause 3):** While the media is free, it must be regulated, but the regulation must be done by an independent body (like the Media Council of Kenya/Communications Authority) whose sole role is to set professional standards (e.g., accuracy, impartiality) and monitor adherence, not control content.
- 4. Promoting Diversity (Clause 5):** The government has a duty to pass laws to establish a fund that actively supports and promotes media diversity and pluralism (having many different media voices), ensuring that media ownership is not concentrated in one place.

II. Citizen's Right & Personal Impact

- **Right to Unfiltered Information:** You benefit directly from media independence because it means the news and opinions you receive are not dictated by the government. This allows for genuine scrutiny of political power.
- **Protection of Media Pluralism:** You have the right to access diverse sources of information, ensured by the constitutional requirement to promote media diversity. This guards against media monopolies.
- **Demand for State Impartiality:** You can challenge State-owned media (like KBC) if they fail to be impartial and instead use public resources to promote the ruling party or suppress opposing views (Clause 4).

III. Real-World Example

- **Scenario:** The government issues a directive to a television station, ordering it to pull a critical investigative story on corruption before it airs, threatening to revoke its operating license if it refuses.
- **Action based on Article 34:** The media house files a petition in the High Court, citing the directive as a clear, unconstitutional violation of the **guaranteed freedom and independence of the media** (Clause 1) and the prohibition against State control or interference (Clause 2a).
- **Result:** The courts have consistently struck down such government actions, issuing **injunctions** (orders to stop) against the State. This constitutional provision means any attempt to license, shut down, or control media content without following due process through the independent regulatory body is null and void. The article is the ultimate defence against censorship, ensuring the media's capacity to serve the public interest.

Access to information.

35. (1) Every citizen has the right of access to—
- a. information held by the State; and
 - b. information held by another person and required for the exercise or protection of any right or fundamental freedom.
2. Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
3. The State shall publish and publicise any important information affecting the nation.

I. Simple Explanation

Article 35 is the constitutional guarantee of **transparency** and the "right to know."

1. **Access to State Information (Clause 1a):** Any **citizen** has the right to demand and receive any information or records held by the government (State, County, or agency), such as public contracts, environmental impact reports, or budget expenditures.
2. **Access to Private Information (Clause 1b):** A citizen can also demand information held by a **private person or company** if that information is necessary for the citizen to exercise or protect one of their constitutional rights (e.g., demanding employment records from a private company to prove discrimination).
3. **Right to Correction (Clause 2):** Every person has the right to ensure that information held about them by the State (or private entities) is accurate. If the information is untrue or misleading, you have the right to demand its **correction or deletion**.
4. **Duty to Publish (Clause 3):** The government has a proactive duty to not just wait to be asked, but to **publicly announce** and publish any information that is important and affects the nation (e.g., public debt figures, health risks, major policy changes).

II. Citizen's Right & Personal Impact

Right to Accountability: You are empowered to fight corruption and waste by demanding to see documents related to how public funds are spent, how contracts are awarded, and how government decisions are made.

Right to Privacy of Data: This article, alongside Article 31 (Privacy), gives you the power to monitor and control the accuracy of your personal records (ID, health, employment) held by institutions, ensuring that bad data doesn't unfairly affect your life.

Foundation for Informed Decision-Making: The government's duty to publish important information ensures you are constantly informed about issues affecting your health, environment, safety, and economy.

III. Real-World Example

- **Scenario:** A County Government awards a multi-million-shilling contract for road construction, but the work is substandard, and the details of the contract are kept secret.
- **Action based on Article 35(1)(a):** A local resident, citing the **Access to Information Act** (the law passed under the authority of this article), sends a formal request to the County demanding copies of the tender documents, contract details, and payment schedules.
- **Result:** If the County refuses, the citizen can sue the County, and the High Court will compel the release of the information. Article 35 has been instrumental in numerous cases where courts have ordered the disclosure of sensitive documents, such as public debt contracts or detailed procurement records, reaffirming the principle that **public information is the property of the public**, not the government.

Freedom of association.

36. (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.

2. A person shall not be compelled to join an association of any kind.

3. Any legislation that requires registration of an association of any kind shall provide that—

a. registration may not be withheld or withdrawn unreasonably; and

b. there shall be a right to have a fair hearing before a registration is cancelled.

I. Simple Explanation

Article 36 is the constitutional authorization for **collective action**. It means you are free to gather with others to pursue common goals, and you cannot be forced to join a group against your will.

1. **Right to Join (Clause 1):** You have the right to form, join, or actively participate in any kind of association—this includes political parties, trade unions, non-governmental organizations (NGOs), religious groups, self-help groups (chamas), sports clubs, and professional bodies.
2. **Freedom from Compulsion (Clause 2):** This is the flip side: No one, neither the government nor a private employer, can force you to become a member of any organization (e.g., a specific trade union, political party, or association).
3. **Protection of Registration (Clause 3):** Since many associations must be legally registered, the law must ensure that:
 - Registration cannot be **unreasonably denied or cancelled** by the Registrar (Clause 3a).
 - If registration is denied or cancelled, the association has a guaranteed **right of appeal** to a court or an independent tribunal (Clause 3b).

II. Citizen's Right & Personal Impact

Right to Collective Power: This is the basis for your right to organize a community project, form a political party to challenge the government, or join a union to collectively bargain for better wages and working conditions.

Protection from State Harassment: If you try to form a civil society organization to monitor government spending, the Registrar cannot simply deny your application for political reasons. You have a legal pathway to challenge the denial in court.

Right to Political Liberty: No employer or government agency can threaten you with loss of employment or benefits if you refuse to join a specific political party or union.

III. Real-World Example

Scenario: A group of activists attempts to register an organization (an NGO) critical of a County Government's environmental policies. The Registrar of Societies delays the registration for months without providing any valid legal reason.

Action based on Article 36(3): The activists file a petition with the High Court, arguing that the Registrar's action is an unreasonable withholding of registration and a violation of their

fundamental right to freedom of association. They also cite the failure to provide a written reason as a violation of the right to fair administrative action (Article 47).

Result: The courts have repeatedly used Article 36(3) to compel the Registrar to approve or provide justifiable reasons for denying registration for all types of associations, from political parties to NGOs. This ensures that the government cannot use bureaucratic processes to stifle dissenting voices and upholds the constitutional guarantee of a vibrant, pluralistic civil society.

Assembly, demonstration, picketing and petition.

37. Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

I. Simple Explanation

Article 37 is the constitutional right to publicly express discontent and demand action from public officials. You are guaranteed the freedom to:

1. **Assemble:** Gather together in public or private spaces with others.
2. **Demonstrate:** Hold a march or public gathering to express collective views.
3. **Picket:** Stand outside a place of work (especially related to labour disputes) to publicize a grievance.
4. **Petition:** Submit a formal, written request or complaint to any government body (national

Crucially, this right is conditional: all these actions must be done in a manner that is strictly peaceable and unarmed.

II. Citizen's Right & Personal Impact

- **Right to Public Voice** This is your direct, active democratic right to show the government the strength of public opinion. If a policy is harmful, you have the right to organize a march or sit-in to protest it.
- **Protection from Unlawful Force** If you organize or participate in a demonstration, and it is peaceful and unarmed, the police are constitutionally obliged to protect you and facilitate your right to protest, not suppress or disrupt the assembly.
- **Right to Formal Demand** If your community is facing a problem (e.g., lack of water), you can formally gather signatures and submit a **petition** to the County Assembly or Parliament, compelling them to consider your demands.

III. Real-World Example

- **Scenario:** A group of youth organizes a street protest against high unemployment rates. They march peacefully toward the County Governor's office to deliver a petition. The police, citing "public order," attempt to stop the marchers violently before they reach their destination.
- **Action based on Article 37:** The youth, or a legal representative, can immediately file a constitutional case. They would argue that their right to **peaceably and unarmed** demonstrate and **present a petition** was violated by the police's unwarranted use of force.

- **Result:** Courts have issued important rulings based on this article. They have ruled that while the State can regulate the *time* and *location* of protests (e.g., to ensure traffic flow and public safety), it cannot prohibit a protest or use excessive force merely because the message is critical of the government. The focus remains on the conduct of the assembly: as long as it is **peaceful and unarmed**, it is constitutionally protected, and the police's duty is to contain any hostile counter-protesters, not to disperse the peaceful assembly itself.

Political rights.

38. (1) Every citizen is free to make political choices, which includes the right—

- a. to form, or participate in forming, a political party;
- b. to participate in the activities of, or recruit members for, a political party; or
- c. to campaign for a political party or cause.

2. Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—

a. any elective public body or office established under this Constitution; or

b. any office of any political party of which the citizen is a member.

3. Every adult citizen has the right, without unreasonable restrictions—

- a. to be registered as a voter;
- b. to vote by secret ballot in any election or referendum; and
- c. to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

I. Simple Explanation

Article 38 guarantees every citizen the right to participate fully in the governance of the country, whether by voting or by seeking elected office.

1. **Freedom of Political Choice (Clause 1):** You are free to decide your own political path. This includes the right to:
 - **Form or Join a Political Party:** Participate in the establishment, activities, and recruitment efforts of any party (linking to Article 36 on Association).
 - **Campaign:** Actively support or oppose any political party or political cause.
2. **Electoral Rights (Clause 2):** This clause guarantees the integrity of the election process:

- **Free, Fair, and Regular:** Elections must be conducted transparently, without intimidation, and occur at constitutionally set intervals.
- **Universal Suffrage:** All eligible adult citizens have the right to vote.
- **Right to Vote:** Every citizen has the right to cast a vote, and this vote must be **secret** (no one can force you to reveal your choice).
- **Right to Be a Candidate:** Every citizen who meets the legal requirements has the right to stand for any public office (President, Governor, MP, etc.) or party office, and to serve if elected.

II. Citizen's Right & Personal Impact

Right to Self-Determination: You cannot be forced to support a specific party or candidate. You have the ultimate power to choose the government through your vote.

Right to Elect Leaders: Your vote is protected by the constitutional requirement for free, fair, and secret elections. If an election is fundamentally flawed, you have the right to challenge it in court.

Right to Aspire to Leadership: If you meet the integrity and educational standards (Article 99), you have the right to run for the highest office in the land.

Freedom of movement and residence.

39. (1) Every person has the right to freedom of movement.

2. Every person has the right to leave Kenya.

3. Every citizen has the right to enter, remain in and reside anywhere in Kenya.

I. Simple Explanation

Article 39 guarantees the right to travel freely both inside and outside the country, and the right of citizens to live wherever they choose within the national territory.

1. **Freedom to Move (Clause 1):** Every person (whether citizen or legal resident) has the right to move freely from place to place within Kenya. This means the government cannot arbitrarily restrict your movement (e.g., imposing an unwarranted roadblock or a localized travel ban).
2. **Freedom to Leave (Clause 2):** Every person has the right to travel out of Kenya (e.g., for work, vacation, or study) and cannot be arbitrarily prevented from exiting the country (linking to the right to a passport in Article 12).
3. **Right to Residence (Clause 3):** This is for **citizens only**. As a Kenyan citizen, you have the right to **enter** the country, **remain** in the country, and **reside** (live permanently) in any county or town within Kenya without official permission or discrimination. This prevents local authorities from ejecting citizens from certain areas.

II. Citizen's Right & Personal Impact

Right to Unrestricted Travel: You are protected from illegal internal restrictions on your movement, such as discriminatory local laws preventing you from working or trading in a particular county based on your origin.

Right to Global Access: The government cannot stop you from travelling abroad unless there is a valid, justifiable legal basis (e.g., a court order or warrant for arrest).

Protection from Tribalism: This article ensures that the country remains united, as no county government can legally treat you as a foreigner or try to forcibly expel you from a region simply because you do not belong to the local ethnic group.

Protection of the right to property.

40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property

—

a. of any description; and

b. in any part of Kenya.

2. Parliament shall not enact a law that permits the State or any person—

a. to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

b. to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

3. The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

i. requires prompt payment in full, of just compensation to the person; and

ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.

4. Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

5. The State shall support, promote and protect the intellectual property rights of the people of Kenya.

6. The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

I. Simple Explanation

Article 39 guarantees the right to travel freely both inside and outside the country, and the right of citizens to live wherever they choose within the national territory.

1. **Freedom to Move (Clause 1):** Every person (whether citizen or legal resident) has the right to move freely from place to place within Kenya. This means the government cannot arbitrarily restrict your movement (e.g., imposing an unwarranted roadblock or a localized travel ban).
2. **Freedom to Leave (Clause 2):** Every person has the right to travel out of Kenya (e.g., for work, vacation, or study) and cannot be arbitrarily prevented from exiting the country (linking to the right to a passport in Article 12).
3. **Right to Residence (Clause 3):** This is for **citizens only**. As a Kenyan citizen, you have the right to **enter** the country, **remain** in the country, and **reside** (live permanently) in any county or town within Kenya without official permission or discrimination. This prevents local authorities from ejecting citizens from certain areas.

II. Citizen's Right & Personal Impact

- **Right to Unrestricted Travel;** You are protected from illegal internal restrictions on your movement, such as discriminatory local laws preventing you from working or trading in a particular county based on your origin.
- **Right to Global Access** The government cannot stop you from travelling abroad unless there is a valid, justifiable legal basis (e.g., a court order or warrant for arrest).
- **Protection from Tribalism;** This article ensures that the country remains united, as no county government can legally treat you as a foreigner or try to forcibly expel you from a region simply because you do not belong to the local ethnic group.

III. Real-World Example

- **Scenario:** A County Assembly passes a local regulation requiring all non-local traders to pay an excessive daily fee to operate stalls, effectively restricting the traders' right to work and move freely.
- **Action based on Article 39(3):** A group of affected traders files a constitutional petition, arguing that the regulation violates the right of a citizen to **reside anywhere**

in Kenya and conduct their livelihood, and also violates the right to **non-discrimination** (Article 27).

- **Result:** The courts would likely strike down the regulation. They have consistently ruled that local barriers that restrict movement, trade, or residence based on origin are unconstitutional, as they violate the fundamental principle of a unified republic where all citizens have equal rights to live and work across the entire national territory guaranteed by Article 39.

Labour relations.

41. (1) Every person has the right to fair labour practices.

2. Every worker has the right—

- a. to fair remuneration;
- b. to reasonable working conditions;
- c. to form, join or participate in the activities and programmes of a trade union; and
- d. to go on strike.

3. Every employer has the right—

- e. to form and join an employers organisation; and
- e. to participate in the activities and programmes of an employers organisation.

4. Every trade union and every employers' organisation has the right—

- a. to determine its own administration, programmes and activities;
- b. to organise; and
- c. to form and join a federation.

5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

I. Simple Explanation

Article 41 establishes the fundamental rights of everyone in the world of work—employees, employers, and their representative organizations—centered around the principle of fair labour practices.

1. **Fairness for All (Clause 1):** Every person involved in work is guaranteed the right to a fair working environment. This overarching principle applies to hiring, managing, disciplinary action, and termination.
2. **Worker Rights (Clause 2):** Employees have four non-negotiable rights:
 - Fair Remuneration: The right to be paid a fair wage (not necessarily equal, but fair, considering the job and conditions).
 - Reasonable Working Conditions: The right to a safe environment, reasonable working hours, and necessary leave.
 - Trade Unionism: The right to join a trade union and participate in its activities.
 - Strike: The right to participate in a lawful strike as a last resort in a labour dispute.
3. **Employer Rights (Clause 3):** Employers have the reciprocal right to form and join employers' organizations (e.g., the Federation of Kenya Employers) to represent their interests.
4. **Collective Rights (Clause 4):** Trade unions and employers' organizations have the right to operate independently, organize their members, and, most importantly, bargain collectively (negotiate terms and conditions) on behalf of their members.

II. Citizen's Right & Personal Impact

- **Right to Protection from Exploitation:** If you are an employee, you can challenge decisions on pay, termination, or working hours if they violate the principle of fair labour practices.
- **Right to Safety:** This article gives you the power to demand that your employer provide a working environment that meets safety and health standards.
- **Right to Collective Voice:** If your employer is unfair, you have the constitutional right to join a union, and that union has the right to negotiate on your behalf and, if necessary, call a legal strike to press your demands.

III. Real-World Example

- **Scenario:** A company unilaterally decides to cut employee salaries by 20% without consulting the staff union, citing poor economic performance.
- **Action based on Article 41:** The trade union, acting on behalf of the workers, files a case at the **Employment and Labour Relations Court**. They argue that the sudden pay cut, done without negotiation, violates the workers' right to **fair remuneration** (Clause 2a) and the union's right to **bargain collectively** (Clause 4c).
- **Result:** The court would likely rule in favor of the workers and union. Citing Article 41, the court would issue an order declaring the pay cut illegal and compelling the employer to restore the original salaries and commence good-faith **collective bargaining** with the union. This article ensures that industrial harmony is maintained through fairness, negotiation, and respect for the rights of all parties.

Environment.

42. Every person has the right to a clean and healthy environment, which includes the right—

a. to have the environment protected for the benefit of present and future generations through legislative and

other measures, particularly those contemplated in Article 69; and

b. to have obligations relating to the environment fulfilled under Article 70.

I. Simple Explanation

Article 42 elevates a clean and healthy environment from a mere policy goal to a **fundamental human right**. It means you are entitled to live in a place free from harmful pollution and ecological degradation.

This right includes two key elements:

1. **Protection and Inter-Generational Equity (Clause a):** The environment must be actively **protected** by the government (through laws and actions, referencing **Article 69** which outlines the State's duty to protect natural resources). This protection is not just for people alive today (**present generations**) but also for those who will live in the future (**future generations**).
2. **Enforcement (Clause b):** You have the right to demand that environmental obligations (defined in **Article 70**) are **fulfilled**. This means you can go to court to stop polluters or government decisions that harm the environment.

II. Citizen's Right & Personal Impact

1. **Right to Clean Air and Water:** You can demand that local industries stop polluting the air you breathe and the water you use. A lack of a clean environment is a direct violation of your constitutional right.
2. **Protection from Pollution:** If a factory, construction site, or government project is causing pollution or noise that negatively affects your health and livelihood, this article gives you the legal standing to challenge them.
3. **Role as Environmental Steward:** This article empowers you to be an active guardian of natural resources, knowing that your action to protect the environment for future generations is constitutionally mandated.

III. Real-World Example

Scenario: A factory discharges untreated chemical waste directly into a local river, which is the community's primary source of water and directly causes illness among residents.

Action based on Article 42: A resident or a community group files a petition in the High Court, citing the violation of their fundamental right to a clean and healthy environment. They can use the powers granted under Article 70 to seek redress.

Result: The courts have used Article 42 and Article 70 to compel polluters to cease operations, restore damaged areas, and pay compensation. In numerous landmark cases, judges have issued orders (like environmental restoration orders) requiring factories to install effluent treatment plants and requiring government agencies to strictly enforce environmental regulations, affirming that the right to a clean environment is immediately enforceable and cannot be ignored for the sake of profit or policy.

Economic and social rights.

- 43.** (1) Every person has the right—
- a. to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
 - b. to accessible and adequate housing, and to reasonable standards of sanitation;
 - c. to be free from hunger, and to have adequate food of acceptable quality;
 - d. to clean and safe water in adequate quantities;
 - e. to social security; and
 - f. to education.
2. A person shall not be denied emergency medical treatment.
3. The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

I. Simple Explanation

Article 43 guarantees that every person has a set of fundamental **Economic and Social Rights**. These rights shift the government's role from merely protecting people's liberty to actively ensuring their basic needs for survival, welfare, and dignity are met.

This article guarantees:

1. **Health (Clause 1a):** The right to the **best possible standard of health** and access to necessary medical services, including specific mention of **reproductive health care**.
2. **Housing, Water, and Food (Clauses 1b, c, d):** The right to a home, safe sanitation, enough food to avoid hunger, and clean water.
3. **Education (Clause 1e):** The right to access education (detailed further in Article 53).
4. **Social Security (Clauses 1f & 2):** The right to government support (like pensions or financial aid) if a person is sick, unemployed, or otherwise **unable to support themselves**.
5. **Emergency Treatment (Clause 3):** This is an **immediate and absolute right**—no hospital (public or private) can turn away a person needing emergency medical treatment.

II. Citizen's Right & Personal Impact

- **Right to Demand Services:** This article gives you the constitutional authority to demand that the government prioritize budget allocations toward healthcare facilities, public schools, clean water projects, and social welfare programs.
- **Protection in a Health Crisis:** If you are in a medical emergency, you have the absolute right to be admitted and stabilized in any hospital without first being asked for money.

- **Protection from Eviction:** Your right to housing means the government cannot arbitrarily evict you without providing an alternative plan, especially if it results in homelessness, as this violates your right to dignity and housing.

III. Real-World Example

- **Scenario:** A large number of children in an impoverished community suffer severe malnutrition. The government has no functioning school feeding program and minimal health outreach.
- **Action based on Article 43:** A human rights organization files a petition against the Ministry of Health and the relevant County Government, arguing that malnutrition violates the children's right to **adequate food** (43(1)c) and the **highest attainable standard of health** (43(1)a). They also invoke the State's duty of **progressive realisation** (Article 21).
- **Result:** The courts have repeatedly used Article 43 to issue binding orders, compelling the government to take immediate action, such as releasing funds for disaster relief, ensuring essential medicines are stocked, and halting illegal evictions. The judiciary treats these rights as **justiciable** (enforceable in court), meaning the State must prove it is allocating its maximum available resources to fulfill these basic needs.

Language and culture.

44. (1) Every person has the right to use the language, and to participate in the cultural life of the person's choice.

2. A person belonging to a cultural or linguistic community has the right, with other members of that community—

- a. to enjoy the person's culture and use the person's language; or
- b. to form, join and maintain cultural and linguistic associations and other organs of civil society.

3. A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

I. Simple Explanation

Article 44 guarantees the individual's freedom to choose their language, participate in culture, and form cultural associations, while simultaneously providing specific protections for minority cultural and linguistic communities.

1. **Individual Choice (Clause 1):** You are free to choose the **language** you speak and the **cultural life** (e.g., music, clothing, festivals, lifestyle) you participate in, without government interference.
2. **Community Protection (Clause 2):** If you belong to a specific cultural or linguistic community (e.g., the Maasai, Luo, or Swahili communities), you and your fellow

members have the right to collectively **enjoy your culture** and **use your language** freely. This clause also allows communities to form and maintain their own cultural associations.

3. **Freedom from Coercion (Clause 3):** This is a critical protection: **no person shall be compelled** to participate in any **cultural practice or rite**. This safeguards individuals, particularly women and children, from harmful or unwanted traditional practices (like forced marriage or female genital mutilation) often carried out under the guise of culture.

II. Citizen's Right & Personal Impact

Right to Cultural Identity: You can freely express your ethnic or cultural identity through dress, food, art, and celebration without fear of discrimination, and you can transmit your mother tongue to your children.

Protection from Harmful Practices: Clause (3) empowers individuals to refuse participation in any harmful or coercive tradition. If you are threatened for refusing a cultural rite, this article provides the highest constitutional defence.

Right to Self-Organization: You can actively work with others in your community to preserve your language and heritage by forming cultural associations (linking to Article 36 on Association).

III. Real-World Example

- **Scenario:** A human rights organization challenges a customary practice in a certain community that demands a young woman undergo a specific rite of passage against her will. The perpetrators justify the practice as an unbreakable cultural tradition.
- **Action based on Article 44(3):** The court would rule immediately that no matter how deep-rooted the tradition, the constitutional guarantee that a person shall **not be compelled to perform, observe or adhere to any cultural practice or rite** is absolute. This constitutional protection supersedes any customary law.
- **Result:** Article 44(3) has been instrumental in legal battles against practices like female genital mutilation (FGM) and forced marriages. The judiciary, using this clause, affirms that cultural rights (Clause 2) must always be enjoyed within the confines of the **Bill of Rights**, and the fundamental rights to dignity (Article 28) and security of the person (Article 29) cannot be overridden by culture.

Family.

45. (1) The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.

2. Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.

3. Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

4. Parliament shall enact legislation that recognises—

a. marriages concluded under any tradition, or system of religious, personal or family law; and

b. any system of personal and family law under any tradition, or adhered to by persons professing a particular religion,

to the extent that any such marriages or systems of law are consistent with this Constitution.

I. Simple Explanation

Article 45 establishes the **family** as the basic building block of society and guarantees it protection by the State. It sets out the constitutional rules for marriage, equality within the marriage, and protection upon divorce.

1. **State Protection (Clause 1):** The government is required to actively protect and support the family unit.
2. **Right to Marry (Clause 2):** Any adult has the right to marry, but the Constitution specifies that marriage must be between persons of the **opposite sex** and must be based on the **free consent** of both parties (banning forced marriage).
3. **Gender Equality in Marriage (Clause 3):** This is a key safeguard. Both spouses are entitled to **equal rights**—whether they are getting married, living together, or getting divorced (**dissolution**). This provides the basis for challenging discriminatory property laws or custody rules.
4. **Protection upon Divorce (Clause 4):** Parliament is mandated to pass laws to protect the financial and welfare interests of both **spouses and dependants** (especially children) when a marriage ends.
5. **Recognition and Registration (Clause 5):** The law must recognize all valid forms of marriage, including those based on **tradition** (customary marriage) and **religious** systems (e.g., Islamic or Christian), and it must provide a mechanism for all of them to be legally **registered**.

II. Citizen's Right & Personal Impact

- **Right to Form a Family:** You have the freedom to choose your spouse and form a family without interference, and to demand that the State support the family environment.
- **Right to Equality in Marriage:** If you are a woman, this article guarantees you equal rights to matrimonial property and equal say in family decisions. This protection is critical during divorce.
- **Protection from Forced Marriage:** You cannot be forced by your family or community to marry anyone. Any law or tradition that allows this is unconstitutional.

III. Real-World Example

- **Scenario:** A married couple divorces. The husband attempts to claim ownership of all property acquired during the marriage, arguing that customary law or prior statutes only recognize the man as the head of the household and property owner.
- **Action based on Article 45(3):** The wife challenges this in the High Court, citing the absolute guarantee that **parties to a marriage are entitled to equal rights** at the dissolution of the marriage.
- **Result:** The courts have consistently used Article 45(3) to overturn discriminatory customary laws and interpretations of property acts, ruling that all spouses are entitled to a fair share of matrimonial property based on their contribution (financial or non-financial). This constitutional clause ensures that family law is applied based on the principle of **gender equality** and **fairness** upon separation.

I. Simple Explanation

Article 46 establishes a powerful bill of rights for every person who buys goods or services, ensuring they are treated fairly, safely, and honestly in the marketplace.

1. **Guaranteed Quality (Clause 1a):** You have the right to demand that anything you purchase, whether it's a product (like food or a phone) or a service (like transport or banking), is of **reasonable quality** and fit for its intended purpose.
2. **Safety, Information, and Compensation (Clauses 1b, c, d):** You are guaranteed the right to:
 - **Information:** Be fully informed about a product or service (e.g., ingredients, expiry date, terms of service).
 - **Protection:** Be protected from products that endanger your **health, safety, or financial well-being**.
 - **Compensation:** Be paid **compensation** (damages) if you suffer loss or injury because a product or service was defective or flawed.
3. **Universal Application (Clause 3):** This is critical. These consumer rights apply to everything, regardless of who provides it—whether it's a **private** supermarket or bank, or a **public** utility company or government agency (e.g., public transport services).
4. **Legislative Mandate (Clause 2):** Parliament must pass laws (like the *Consumer Protection Act*) to detail these rights, including regulating **advertising** to ensure it is fair, honest, and decent.

II. Citizen's Right & Personal Impact

- **Right to Redress:** If you buy a faulty product, this article is the foundation for demanding a replacement, refund, or repair. If you are injured by a defective item, you have the right to sue for compensation.
- **Protection from Fraud:** You are legally protected from misleading advertising, hidden fees, and contracts that bury unfair terms, ensuring you make informed decisions.
- **Demand for Public Service Quality:** You can challenge a public entity (like a water company or energy provider) if their services are substandard or dangerous, demanding an improvement in quality and safety.

III. Real-World Example

- **Scenario:** A consumer purchases packaged food from a major supermarket, but the food is expired and causes severe illness. The supermarket denies responsibility, claiming they bought it from a third-party distributor.
- **Action based on Article 46(1):** The consumer files a complaint with the Competition Authority of Kenya (CAK) and potentially sues the supermarket, citing the violation of the right to **goods of reasonable quality** (46(1)a) and the right to **protection of their health** (46(1)c).
- **Result:** Courts and regulatory bodies, relying on Article 46, often hold the seller (in this case, the supermarket) responsible, even if they did not manufacture the goods. The consumer is likely to receive a ruling that mandates **compensation** (Clause 1d) for the medical expenses and suffering caused by the defective product, affirming that the consumer's health and economic interests are constitutionally protected.

Consumer rights.

- 46.** (1) Consumers have the right—
- a. to goods and services of reasonable quality;
 - b. to the information necessary for them to gain full benefit from goods and services;
 - c. to the protection of their health, safety, and economic interests; and
 - d. to compensation for loss or injury arising from defects in goods or services.
2. Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.
3. This Article applies to goods and services offered by public entities or private persons.

Fair administrative action.

- 47.** (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
2. if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—

- a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
- b. promote efficient administration.

I. Simple Explanation

Article 47 is your constitutional protection from bad governance. It ensures that when the government (or any public body) makes a decision that affects you (an "administrative action"—like granting a license, firing an employee, making a tax assessment, or issuing a tender), it must follow a strict standard of fairness.

1. **The Fair Standard (Clause 1):** Every administrative action must be:
 - **Expeditious & Efficient:** Done quickly and competently.
 - **Lawful & Reasonable:** Based on existing law and be a sensible, non-arbitrary decision.
 - **Procedurally Fair:** The most important part—this means you must be heard before a decision against you is made (**natural justice**).
2. **Right to Reasons (Clause 2):** If the government takes action that negatively affects your rights (e.g., revoking your business permit), they must provide you with **written reasons** for that action. This prevents government officers from hiding behind vague decisions.
3. **Judicial Review (Clause 3):** Parliament is mandated to pass laws (like the *Fair Administrative Action Act*) that allow you to challenge unfair administrative decisions in a **court**

II. Citizen's Right & Personal Impact

Right to Natural Justice: Before any government agency (e.g., a disciplinary body, a licensing board, or the police) takes a decision that harms you (e.g., firing you, declining your application, or demolishing your property), you have the right to be notified, present your side of the story, and be heard.

Right to Accountability: If an administrative decision goes against you, you have a constitutional right to know exactly **why**. This knowledge allows you to prepare an effective appeal or court challenge.

Protection from Arbitrary Power: This article ensures that government agencies, no matter how powerful, must act within the law and in a sensible manner, preventing abuse of discretion or bureaucratic high-handedness.

III. Real-World Example

- **Scenario:** A County Public Service Board dismisses a public servant for alleged gross misconduct without issuing a formal charge sheet, giving them time to respond, or holding a fair disciplinary hearing.
- **Action based on Article 47:** The dismissed employee files a petition in the Employment and Labour Relations Court. They argue that the firing is an administrative action that violated their right to be **procedurally fair** (Clause 1) because they were not heard before the decision was made (the *audi alteram partem* rule).

- **Result:** Courts have used Article 47 to overturn thousands of unfair government decisions. In this case, the court would likely declare the dismissal **null and void** because the lack of fair procedure itself violated the Constitution, regardless of the employee's guilt. The court would compel the Board to reinstate the employee and begin a fresh, constitutionally compliant disciplinary process.

Access to justice.

48. The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

Rights of arrested persons.

49. (1) An arrested person has the right—

a. to be informed promptly, in language that the person understands, of—

i. the reason for the arrest;

ii. the right to remain silent; and

iii. the consequences of not remaining silent;

b. to remain silent;

c. to communicate with an advocate, and other persons whose assistance is necessary;

d. not to be compelled to make any confession or admission that could be used in evidence against the person;

e. to be held separately from persons who are serving a sentence;

f. to be brought before a court as soon as reasonably possible, but not later than—

i. twenty-four hours after being arrested; or

ii. if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;

g. at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and

h. to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

(2) A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

I. Simple Explanation

Article 48 is the constitutional promise that the justice system must be open and accessible to everyone, regardless of their financial status.

1. **Guaranteed Access:** The government (**The State**) has a duty to ensure that the courts, police, and legal processes are available to **all persons** seeking justice (e.g., filing a case, reporting a crime, or seeking legal redress). It ensures that justice is not just for the wealthy.
2. **Legal Aid Mandate:** If a person cannot afford a lawyer (**legal services**), the State is constitutionally mandated to provide **legal aid**. This ensures that poverty does not prevent a person from defending their rights or pursuing a claim in court.

II. Citizen's Right & Personal Impact

- **Right to a Hearing:** If your rights have been violated (by the government or a private entity), you have the constitutional authority to enter the court system to seek a remedy.
-
- **Right to Legal Representation:** This is the basis for demanding that the State fund and expand legal aid programs. If you are poor and facing a serious legal matter (especially criminal charges or major constitutional issues), you have the right to a government-funded lawyer.
-
- **Demand for Accessible Courts:** You can challenge systemic barriers that make courts inaccessible (e.g., exorbitant court fees, distant court locations, or overly complex procedures).

III. Real-World Example

- **Scenario:** A low-income person is charged with a serious crime and faces potential imprisonment but cannot afford a lawyer to defend themselves.
- **Action based on Article 48:** The accused person applies to the **National Legal Aid Service (NLAS)** or the court for a lawyer. Citing Article 48, the court would confirm the State's duty to provide **legal aid** in this criminal matter, often appointing an advocate to represent the accused free of charge.
- **Result:** The courts have used Article 48, alongside the right to fair hearing (Article 50), to emphasize that access to justice is meaningless without access to legal representation for the poor. The provision has driven the creation and expansion of the NLAS and influenced court rulings to lower filing fees and simplify procedures, thus ensuring that the promise of justice is delivered to the most vulnerable.

Fair hearing.

50. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

2. Every accused person has the right to a fair trial, which includes the right—
 - a. to be presumed innocent until the contrary is proved;

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- b. to be informed of the charge, with sufficient detail to answer it;
- c. to have adequate time and facilities to prepare a defence;
- d. to a public trial before a court established under this Constitution;
- e. to have the trial begin and conclude without unreasonable delay;
- f. to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
- g. to choose, and be represented by, an advocate, and to be informed of this right promptly;
- h. to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- i. to remain silent, and not to testify during the proceedings;
- j. to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
- k. to adduce and challenge evidence;
- l. to refuse to give self-incriminating evidence;

- m. to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;

- m. not to be convicted for an act or omission that at the time it was committed or omitted was not—

- i. an offence in Kenya; or

- ii. a crime under international law;

- m. not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;

- m. to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

- m. if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.

3. If this Article requires information to be given to a person, the information shall be given in language that the person understands.

4. Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.

5. An accused person—

a. charged with an offence, other than an offence that the court may try by summary procedures, is entitled during the trial to a copy of the record of the proceedings of the trial on request; and

b. has the right to a copy of the record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by law.

6. A person who is convicted of a criminal offence may petition the High Court for a new trial if—

a. the person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and

b. new and compelling evidence has become available.

7. In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court.

8. This Article does not prevent the exclusion of the press or other members of the public from any proceedings if the exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security.

9. Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences.

I. Simple Explanation

Article 49 protects the rights of anyone arrested by the police. It shifts power from the security forces to the courts and the citizens, ensuring fair treatment from the moment of arrest.

1. **Right to Information (Clause 1a):** Upon arrest, the police must immediately inform the person of **why** they are being arrested, their right to **remain silent** (the Miranda Right), and the fact that anything they say can be used against them. This must be done in a language the person **understands**.

2. **Prompt Arraignment (Clause 1c):** The arrested person cannot be held indefinitely. They must be taken before a court within a maximum of **24 hours** (or the next court day). This prevents arbitrary detention.
3. **No Coercion (Clause 1b & 1e):** The person has the right to **remain silent**, and the police cannot force them to make any **confession or admission** that could be used against them in court.
4. **Right to Legal Access (Clause 1f):** The person has the right to **communicate with a lawyer** and have that lawyer present during the entire detention period.
5. **Bail is a Right (Clause 1h):** The right to be released on **bond or bail** is the constitutional default position. A court can only deny bail if the prosecution presents **compelling reasons** (e.g., threat to the victim, flight risk, or likelihood of interfering with witnesses).
6. **No Detention for Investigation (Clause 2):** The police cannot ask a court to hold a person in custody merely because they need more time to finish their investigation; investigation must happen before or outside detention.

II. Citizen's Right & Personal Impact

Protection from Abuse: If you are arrested, you have the immediate right to demand to know the charges and to call your lawyer. Any violation of these rights can lead to your release and the exclusion of evidence obtained illegally.

Right to Speedy Justice: The 24-hour rule ensures you cannot be held in police cells for extended periods, reducing the risk of abuse and speeding up the judicial process.

Right to Freedom: Unless the State proves a compelling danger, you have the right to temporary freedom (bail) while awaiting trial. The government cannot use pre-trial detention as punishment.

III. Real-World Example

- **Scenario:** The police arrest a person on a Friday evening, intending to hold them over the weekend and take them to court on Monday, well past the 24-hour limit. They also deny the person access to a family member or a lawyer.
- **Action based on Article 49:** The family or lawyer immediately files a **Habeas Corpus** petition (Article 25) and cites Article 49(1)(c) and (f). They argue that the police failed to meet the constitutional requirement to bring the person to court within **24 hours** (or the next court day, which is the Saturday court session if available) and illegally denied access to legal counsel.
- **Result:** The courts would immediately order the police to produce the person. The continued denial of access to a lawyer or the delay past 24 hours constitutes a constitutional violation. The court would likely order the person's **immediate release** unless the police can show an overwhelming reason for detention, and any evidence obtained during the illegal delay may be rejected in the subsequent trial.

Rights of persons detained, held in custody or imprisoned.

51. (1) A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.

2. A person who is detained or held in custody is entitled to petition for an order of *habeas corpus*.

3. Parliament shall enact legislation that—

a. provides for the humane treatment of persons detained, held in custody or imprisoned; and

b. takes into account the relevant international human rights instruments.

I. Simple Explanation

Article 51 confirms that individuals whose freedom is restricted (whether they are suspects in police cells, waiting trial, or convicted prisoners) do **not** lose their fundamental human rights.

1. **Retention of Rights (Clause 1):** A person behind bars still keeps all their constitutional rights (like dignity, fair administrative action, and family rights), except for those rights that are obviously impossible to grant due to their confinement (e.g., freedom of movement).
2. **Habeas Corpus (Clause 2):** This reinforces the **non-derogable** right (Article 25) to challenge the legality of one's detention. If someone is being held, they can always ask a court to review whether the detention is legal.
3. **Humane Treatment (Clause 3):** Prisoners who have been convicted and are serving a sentence have the right to **dignified treatment**. This means the State has a mandatory duty to provide, free of charge:
 - **Basic necessities:** Adequate accommodation, proper sanitation, nutritious food, suitable clothing, and medical care.
 - **Spiritual needs:** Facilities for practicing their **religious observance**.

II. Citizen's Right & Personal Impact

Right to Dignified Confinement: If you are ever imprisoned, you have the right to challenge inhuman conditions—like overcrowding, poor hygiene, or lack of proper food/medical care—as a violation of your dignity.

Right to Healthcare in Custody: The State cannot deny you necessary medical treatment while you are in custody or prison, which is crucial for protecting the right to health (Article 43).

Protection from Punitive Conditions: Punishment is the loss of liberty, not the loss of fundamental human rights. You are protected from having prison or detention conditions used as an extra form of degrading punishment.

III. Real-World Example

- **Scenario:** Prisoners in a correctional facility complain that they are sleeping on the floor due to severe overcrowding, have inadequate sanitation, and are not receiving required medication for chronic illnesses.
- **Action based on Article 51:** A prisoner or a public interest lawyer files a constitutional petition challenging the **inhumane conditions of detention** as a violation of the prisoners' right to **treatment consistent with human dignity** (Clause 3).
- **Result:** The courts have repeatedly used Article 51 to demand prison reform. The High Court, for instance, has issued structural orders compelling the State to improve sanitation, address overcrowding (by releasing certain low-risk offenders), and ensure the immediate provision of adequate medical treatment to inmates. This article serves as the constitutional mandate for continuous improvement of prison and detention standards in Kenya.

PART 3— SPECIFIC APPLICATION OF RIGHTS

Interpretation of this Part.

52. (1) This Part elaborates certain rights to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groups of persons.

(2) This Part shall not be construed as limiting or qualifying any right.

I. Simple Explanation

Article 52 ensures that the family and support network of an individual whose liberty is restricted (or whose location is unknown) are kept informed and are allowed contact. It protects the family unit from being subjected to uncertainty or emotional abuse by the State.

1. **Right to Contact (Clause 1):** The State must enable a detained or imprisoned person to maintain contact with their support system. This includes visits and communication with their **spouse/partner, relatives, friends, and religious counsellor**. The State cannot arbitrarily cut off the person's access to their family.
2. **Right to Information on Whereabouts (Clause 2):** This is a critical safeguard against **forced disappearances**. If a family member is arrested, detained, imprisoned, or **missing** (and presumed to be in State custody), their family has a constitutional right to be immediately informed of their **location** and status.

II. Citizen's Right & Personal Impact

- **Right to Dignified Confinement:** If you are ever imprisoned, you have the right to challenge inhuman conditions—like overcrowding, poor hygiene, or lack of proper food/medical care—as a violation of your dignity.
- **Right to Healthcare in Custody:** The State cannot deny you necessary medical treatment while you are in custody or prison, which is crucial for protecting the right to health (Article 43).
- **Protection from Punitive Conditions:** Punishment is the **loss of liberty**, not the loss of fundamental human rights. You are protected from having prison or detention conditions used as an extra form of degrading punishment.

III. Real-World Example

- **Scenario:** Prisoners in a correctional facility complain that they are sleeping on the floor due to severe overcrowding, have inadequate sanitation, and are not receiving required medication for chronic illnesses.
- **Action based on Article 51:** A prisoner or a public interest lawyer files a constitutional petition challenging the inhumane conditions of detention as a violation of the prisoners' right to treatment consistent with human dignity (Clause 3).

- **Result:** The courts have repeatedly used Article 51 to demand prison reform. The High Court, for instance, has issued structural orders compelling the State to improve sanitation, address overcrowding (by releasing certain low-risk offenders), and ensure the immediate provision of adequate medical treatment to inmates. This article serves as the constitutional mandate for continuous improvement of prison and detention standards in Kenya

Children.

53. (1) Every child has the right—

- a. to a name and nationality from birth;
- b. to free and compulsory basic education;
- c. to basic nutrition, shelter and health care;
- d. to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
- d. to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
- d. not to be detained, except as a measure of last resort, and when detained, to be held—
 - i. for the shortest appropriate period of time; and
 - ii. separate from adults and in conditions that take account of the child's sex and age.

(2) A child's best interests are of paramount importance in every matter concerning the child.

I. Simple Explanation

Article 53 provides a detailed list of rights for every person under the age of 18 (**child**). It elevates the **best interests of the child** (Clause 2) to the highest legal principle in any decision concerning them.

1. **Identity and Basic Needs (Clauses 1a, b, c):** A child has the absolute right to an identity (**name and nationality**) and the essential needs for growth: **free education, nutrition, shelter, and health care** (linking to Article 43).
2. **Protection and Safety (Clause 1d):** A child must be actively protected from harm, including: **abuse, neglect, violence, inhuman punishment**, and any form of **exploitative labour** (including harmful traditional practices).
3. **Parental Responsibility (Clause 1e):** Both the mother and the father have **equal responsibility** to provide for the child, regardless of their marital status.

4. **Justice for Children (Clause 1f & 3):** Detention of a child should be a measure of **last resort**, only for the **shortest time**, and always **separate from adults**. Furthermore, a child cannot be recruited into any armed group.

II. Citizen's Right & Personal Impact

Right to Free Education: If you are a parent, this is the legal basis for demanding that the government provide quality, free, and compulsory basic education for your child.

Protection from Parental Neglect: If a parent (father or mother) refuses to provide for their child, this article provides the constitutional basis for compelling them to provide maintenance, regardless of whether they were married.

Safety and Dignity: A child has the right to report abuse or harmful practices (like Female Genital Mutilation or early marriage) to the authorities and be protected by the State.

III. Real-World Example

- **Scenario:** A County Government decides to impose school fees for certain necessary services in public primary schools, effectively making basic education non-free.
- **Action based on Article 53(1)(b):** Parents or a public interest organization challenges the fees in the High Court, arguing that the fees violate the right to **free and compulsory basic education**.
- **Result:** The courts have consistently invoked Article 53(1)(b) and ruled that any fee imposed by the government that acts as a barrier to basic education is **unconstitutional**. The High Court would issue an order compelling the government to abolish the fee and refund money collected. Similarly, Clause (2) is used in every single custody or adoption case, where the court must prove that the decision it makes prioritizes the **best interests of the child** above all other concerns (e.g., parental claims or financial status).

Persons with disabilities.

54. (1) A person with any disability is entitled—

- a. to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
- b. to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
- c. to reasonable access to all places, public transport and information;
- d. to use Sign language, Braille or other appropriate means of communication; and
- e. to access materials and devices to overcome constraints arising from the person's disability.

(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the

public in elective and appointive bodies are persons with disabilities.

I. Simple Explanation

Article 54 ensures that persons with disabilities (PWDs) are treated equally and can participate fully in all aspects of life. It explicitly requires the State to address physical, informational, and social barriers.

1. **Dignity and Respect (Clause 1a):** PWDs must be treated respectfully, and this includes using language that is not demeaning or patronizing.
2. **Accessibility (Clauses 1b & 1c):** The State must ensure **reasonable access** to all public places, public transport, information, and educational facilities. Education should be **integrated** (not segregated) where possible.
3. **Communication (Clause 1d):** PWDs have the right to use communication tools like **Sign Language and Braille** in official and public settings.
4. **Representation (Clause 2):** The State must actively work toward ensuring PWDs are adequately **represented** in government positions and Parliament.

II. Citizen's Right & Personal Impact

Right to Barrier-Free Access: If you use a wheelchair, this is the legal basis for demanding ramps, accessible washrooms, and safe entry/exit points in public buildings and transport.

Right to Inclusive Education: PWD students can demand reasonable accommodations (e.g., modified materials, specific support) in integrated public schools.

Right to Non-Discrimination: You are protected from being denied a job or a position simply because of your disability, provided you are capable of performing the role.

III. Real-World Example

Scenario: A PWD tries to attend a public function at a government building but finds no ramps, and the toilets are inaccessible.

Action based on Article 54: The individual, citing the right to reasonable access to all places (1c), sues the government body responsible.

Result: Courts have issued mandatory injunctions compelling government entities to comply with the constitutional requirement for accessibility standards, often referencing the Persons with Disabilities Act (the legislation enacted under this article). This ensures new and existing public infrastructure must be physically accessible.

Rights of persons detained, held in custody or imprisoned.

1. (1) A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental

freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned.

2. A person who is detained or held in custody is entitled to petition for an order of *habeas corpus*.

3. Parliament shall enact legislation that—

- a. provides for the humane treatment of persons detained, held in custody or imprisoned; and
- b. takes into account the relevant international human rights instruments.

Youth.

55. The State shall take measures, including affirmative action programmes, to ensure that the youth—

- a. access relevant education and training;
- b. have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
- b. access employment; and
- b. are protected from harmful cultural practices and exploitation.

I. Simple Explanation

Article 55 requires the State to actively support the youth (generally defined as persons between 18 and 35 years old) through **affirmative action** to ensure they are fully integrated into society.

1. **Skills and Opportunities:** The State must ensure youth get the necessary **education and training** (55a) and have genuine opportunities for **employment** (55c).
2. **Participation:** Youth must be given platforms to **associate, be represented**, and participate meaningfully in all areas of national life, especially **political and economic spheres** (55b).
3. **Protection:** Youth must be protected from **exploitation** and harmful cultural practices (55d).

II. Citizen's Right & Personal Impact

- **Right to Economic Inclusion:** You can demand that government policies prioritize employment and training opportunities for young people (e.g., job creation programs, youth tenders).

- **Right to Representation:** This is the constitutional basis for demanding youth representation in county and national planning bodies.
- **Protection from Abuse:** Young women and men are protected from sexual or labour exploitation, often enabled by poverty.

III. Real-World Example

- **Scenario:** The government allocates a large portion of development tenders without any special provision for youth-led businesses.
- **Action based on Article 55:** A youth organization can challenge the process, citing the State's duty to take **affirmative action programmes** to ensure youth **access employment and economic opportunities**.
- **Result:** This article provides the mandate for the **30% procurement reservation rule** (Access to Government Procurement Opportunities - AGPO) for youth, women, and PWDs, legally ensuring that a significant portion of public tenders goes to enterprises led by these special groups.

Article 56: Minorities and Marginalised Groups

The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—

- (a) participate and are **represented in governance** and other spheres of life;
- (b) are provided with **special opportunities** in **educational and economic fields**;
- (c) are provided with **reasonable access to water, health services and infrastructure**; and
- (d) develop their **cultural values, languages and practices**.

I. Simple Explanation

Article 56 focuses on groups that are geographically or historically disadvantaged (**minorities and marginalised groups**). The State has a duty to use **affirmative action** to lift these communities up and integrate them fully into the nation.

1. **Representation and Development:** The State must ensure these groups are **represented in governance** (56a) and have **special opportunities** in **education and economics** (56b).
2. **Basic Services:** The State must provide **reasonable access to essential infrastructure and services** that they lack, such as **water, health, and roads** (56c).
3. **Cultural Preservation:** The State must support them to **develop their cultural values and languages** (56d).

II. Citizen's Right & Personal Impact

- **Right to Targeted Investment:** If you belong to a marginalized community (e.g., a pastoralist or hunter-gatherer group), you can demand that your County or the National Government allocate specific funds to deliver water, health clinics, and schools to your area.
- **Right to Special Slots:** Your children have a right to benefit from special admission criteria or bursaries designed to increase their representation in universities and colleges.

III. Real-World Example

- **Scenario:** Members of a historically marginalized community (e.g., a forest-dwelling group) have no schools or health facilities in their area.
- **Action based on Article 56:** Community leaders petition the government, citing the constitutional duty to provide **special opportunities in educational fields** and **reasonable access to health services**.
- **Result:** This article is the foundation for bodies like the **Equalization Fund** (under Article 204), which is designed to allocate funds directly to counties containing marginalized communities to bring their service standards up to the national average, fulfilling the progressive realization of their rights.

Article 57: Rights of Older Members of Society

57. The State shall take measures to ensure the rights of older members of society to—

- (a) fully participate in the affairs of society;
- (b) pursue personal development;
- (c) live in dignity and respect and be free from **abuse**; and
- (d) receive **reasonable care and assistance** from their family and the State.

I. Simple Explanation

Article 57 ensures that Kenya's older citizens are protected, respected, and supported by both their families and the government.

1. **Dignity and Protection:** Older citizens have the right to live with **dignity and respect** and be **free from abuse** (57c).
2. **Participation and Support:** They must be enabled to **participate fully** in society's affairs (57a) and receive **reasonable care and assistance** from both their **family and the State** (57d).

II. Citizen's Right & Personal Impact

- **Right to State Support:** This is the constitutional basis for government programs like the **Older Persons Cash Transfer Program** (social security) and demanding priority access to public services like hospitals and transport.
- **Protection from Abuse:** Older citizens are protected from financial, emotional, or physical abuse, especially by family members.
- **Right to Dignity:** If you are an older citizen, you can demand that public services (like hospital queues or banking services) accommodate your needs.

III. Real-World Example

- **Scenario:** An older person is denied priority treatment at a public hospital despite being physically frail.
- **Action based on Article 57:** The person can file a complaint with the hospital board, citing the constitutional right to **reasonable care and assistance** and to **live in dignity**.
- **Result:** This article compels public institutions to establish clear policies that grant priority service to older citizens, ensuring that their vulnerability is addressed and their dignity is upheld in public life.

Article 58: States of Emergency

(1) A state of emergency may be declared only—

(a) if the State is threatened by **war, invasion, general insurrection, disorder, natural disaster or another public emergency**; and

(b) the declaration is necessary to restore peace and order.¹

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only—²

(³a) **prospectively** (starting now), and not retrospectively (backdated); and

(b) for a maximum period of **fourteen days** from the date of the declaration, unless extended by the National Assembly.

(3) The National Assembly may extend the declaration—

(a) for not more than **two months** at a time; and

(b) only by a resolution supported by **two-thirds** of all members of the Assembly.

(4) The Supreme Court may decide on the validity of;

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration; and
- (c) any legislation enacted, or other action taken, in consequence of that declaration.

I. Simple Explanation

Article 58 sets the strict conditions and limitations under which the government can declare a **State of Emergency**—a situation where certain rights may be temporarily restricted to deal with a grave crisis.

- 1. **Strict Conditions (Clause 1):** An emergency can only be declared for extreme threats like **war, invasion, natural disaster, or general disorder**, and only if it is the absolute last measure needed to restore order.
- 2. **Short Duration (Clause 2):** Any declaration is automatically limited to **14 days**. After that, it must be approved by the **National Assembly** (Parliament) to continue.
- 3. **Parliamentary Oversight (Clause 3):** Parliament can only extend the emergency for a maximum of **two months** at a time, and the vote requires a **two-thirds majority** of all MPs, ensuring broad political agreement for long-term restrictions on rights.
- 4. **Judicial Review (Clause 4):** The **Supreme Court** has the final authority to review and strike down the declaration, any extensions, or any actions taken by the government during the emergency if they are found to be illegal or unconstitutional.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection from Dictatorship	This article ensures that the government cannot use a crisis (like a terror attack or severe drought) to seize absolute power or impose long-term martial law without strict democratic and judicial checks.
Right to Speedy Return to Freedom	Any restriction of your rights (like a curfew or detention without trial, provided it's not one of the non-derogable rights in Article 25) is temporary, constitutionally short, and subject to review.
Right to Challenge Power	If the government acts unreasonably during an emergency, you have the right to petition the Supreme Court to challenge that action, even while the emergency is in effect.

III. Real-World Example

- **Scenario:** A severe drought leads to massive hunger and violent resource conflicts, prompting the President to declare a State of Emergency in the affected regions to allow the military to manage aid distribution and restore order.
- **Action based on Article 58:** The declaration immediately restricts the rights of movement and assembly in those areas. However, within 14 days, a Member of Parliament challenges the legality of the declaration in the Supreme Court (Clause 4), arguing that the disaster does not warrant such an extreme measure.
- **Result:** The Supreme Court would review the facts and the necessity of the declaration. If it finds that peace and order could be restored using normal laws, or that the emergency is being used to pursue political opponents, it would invalidate the declaration (Clause 4), compelling the government to end the restrictions on rights.

Article 59: Kenya National Human Rights and Equality Commission

59. (1) There is established the **Kenya National Human Rights and Equality Commission**.

(2) The functions of the Commission are set out in Article 252.

(3) The Commission, a member of the Commission, or a person acting on the directions of the Commission, shall not be liable to any civil or criminal proceedings in respect of anything done in good faith in the exercise of a function under this Constitution or any legislation.

I. Simple Explanation

Article 59 establishes the **Kenya National Human Rights and Equality Commission (KNHREC)**. This body is the primary independent government watchdog responsible for promoting and protecting human rights and enforcing equality.

1. **Establishment (Clause 1):** The KNHREC is created directly by the Constitution.
2. **Functions (Clause 2):** Its roles—which include investigating complaints, monitoring human rights compliance, and making recommendations to Parliament—are detailed later in **Article 252** (on Commissions and Independent Offices).
3. **Immunity (Clause 3):** To ensure its independence and effectiveness, the Commission and its staff are protected from being sued or criminally charged for actions taken **in good faith** while carrying out their constitutional duties.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to a Watchdog	You have the right to file a complaint with the KNHREC if your rights (e.g., equality, non-discrimination, fair administrative action) have been violated by the State or a private entity.
Right to Independent Inquiry	If a police force or a government agency violates rights on a large scale (e.g., land evictions or political violence), you can demand that the KNHREC initiate an independent investigation.
Protection of Rights Enforcement	The immunity clause ensures that the Commission can fearlessly criticize the government or recommend prosecution without the threat of intimidation through lawsuits.

III. Real-World Example

- **Scenario:** A citizen is consistently denied employment by a government agency based on their ethnic origin. They are hesitant to file a full court case due to cost and complexity.
- **Action based on Article 59:** The citizen files a formal complaint with the **Kenya National Human Rights and Equality Commission (KNHREC)**. The Commission investigates the case, holds hearings, and finds evidence of discrimination.

- **Result:** The KNHREC uses its powers (detailed in Article 252) to issue a public report, recommend policy changes to the agency, and may even compel the government to implement **affirmative action** (Article 27) to remedy the past discrimination. While it is not a court, the KNHREC's findings hold significant legal and moral weight.



“Human rights are not things that are put on the table for people to enjoy. These are things you fight for and then you protect.” – Wangari Maathai

Chapter Five: Land And Environment

Article 60: Principles of Land Policy

60. (1) The land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

- (a)* **equitable access** to land;
- (b)* **security of land rights**;
- (c)* sustainable and productive management of land resources;
- (d)* **transparent and cost-effective administration** of land;
- (e)* elimination of **gender discrimination** in law, customs and practices related to land and property;
- (f)* encouragement of **community participation** in land management and conservation; and
- (g)* democratic dignity in land tenure.

I. Simple Explanation

Article 60 sets the foundational rules for how all land in Kenya—whether publicly or privately owned—must be treated. It shifts land management from an administrative exercise to a rights-based system focused on fairness, sustainability, and transparency.

1. **Core Goals:** All land management must be **equitable** (fair), **efficient**, **productive**, and **sustainable** (managed for future generations).
2. **Key Principles (Clauses a, b, d):** The policy mandates **equitable access** (fair distribution), guarantees the **security of land rights** (once you have a title, it's safe), and requires **transparent** and affordable land administration (reducing corruption).
3. **Social Justice (Clause e):** It explicitly requires the **elimination of gender discrimination** in all matters concerning land, ensuring that women have equal rights to acquire, own, and inherit property.
4. **Community Focus (Clause f):** It demands the active **participation of communities** in decisions about land management and conservation in their areas.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Secure Title	You have the right to hold your land title or lease without the fear that the State or a powerful individual can arbitrarily cancel or revoke it.
Right to Gender Equality in Land	As a woman, this article provides the constitutional basis for challenging cultural practices and laws that prevent you from inheriting or owning land equally with men.
Protection from Corruption	You have the right to transparent, cost-effective, and fast services when dealing with land offices (e.g., searches, transfers, and registration).

III. Real-World Example

- **Scenario:** A widow attempts to transfer her late husband's land to her name, but local customary elders refuse, stating that land ownership must pass only through the male lineage.
- **Action based on Article 60(1)(e):** The widow files a case in the Environment and Land Court, citing the constitutional principle requiring the **elimination of gender discrimination in law, customs and practices related to land**.
- **Result:** The courts have consistently used Article 60, alongside Article 27 (Equality), to rule that any customary practice or unwritten law that discriminates against women in land rights is **unconstitutional and void**, compelling land registrars to record women as legal owners or inheritors.

Article 61: Classification of Land

61. (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

(2) Land in Kenya is classified as—

(a) **public land;**

(b) **community land;** or

(c) **private land.**

I. Simple Explanation

Article 61 establishes the foundational principle that **all land** in the Republic is owned by the Kenyan people and defines the three distinct legal categories under which land can be held.

1. **Collective Ownership (Clause 1):** Land is not owned by the State, the President, or any single entity; it belongs to the people, either collectively as a **nation**, as **communities**, or as **individuals**.
2. **Three Categories (Clause 2):** All land in Kenya legally falls into one of three categories:

- **Public Land:** Held by the State (National or County Government) for public use (e.g., government offices, parks, roads, reserves).
- **Community Land:** Held by communities (e.g., specific ethnic, historical, or cultural groups) and managed by them through trusts (replacing former 'Trust Land').
- **Private Land:** Held by individuals or corporate entities under freehold or leasehold tenure.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Ownership	This article confirms the legal existence and constitutional validity of the private land category, providing security for your title deed or lease agreement.
Right to Community Control	If you belong to a specific community, this article is the foundation for your right to participate in the management, protection, and utilization of land historically belonging to your community.
Protection of Public Resources	You have the right to demand that public land (like forests or road reserves) is used responsibly and transparently by the government for the benefit of the nation, and not illegally grabbed by individuals.

III. Real-World Example

- **Scenario:** A portion of land traditionally used by a specific indigenous group for grazing or cultural ceremonies is about to be sold off by the National Government to a private developer.
- **Action based on Article 61(2)(b):** The community can sue the government, arguing that the land should be recognized and held as **Community Land** under this article and the *Community Land Act*, meaning the government has no right to sell it without the community's consent.
- **Result:** Article 61(2)(b) has been instrumental in legal battles, leading to rulings that restore ancestral lands to communities and compel the government to recognize and register these areas under community land titles, thereby fulfilling the constitutional promise of collective land ownership.

Article 62: Public Land

62. (1) Public land is—

- (a) **unoccupied or unalienated land;**
- (b) land held by any State organ;
- (c) land transferred to the State by any way;
- (d) forest reserves, national parks, national reserves, protected areas;
- (e) all mineral and natural resources;

(f) government infrastructure (roads, railways, etc.);

(g) land between the high and low water marks;

(h) **territorial sea** and **exclusive economic zone**;

(i) land not otherwise classified as private or community land.

(2) Public land shall vest in and be held by the National and County Governments in trust for the people of Kenya.

(4) Public land shall not be **disposed of only by way of lease not exceeding ninety-nine years** and only in accordance with an Act of Parliament.

I. Simple Explanation

Article 62 formally defines **Public Land** and outlines how it must be managed. It ensures that the majority of Kenya's natural and infrastructural resources are protected for the benefit of all citizens.

1. **What is Public Land (Clause 1):** The clause provides an extensive list, including **unoccupied land**, land held by government offices, **natural reserves** (forests, parks), and all **mineral resources** and the **territorial waters**.
2. **Held in Trust (Clause 2):** Crucially, the National and County Governments **do not own** public land; they only hold it **in trust for the people of Kenya**. This creates a fiduciary duty (a duty of loyalty and care) on the government to manage it responsibly.
3. **Restriction on Sale (Clause 4):** Public land **cannot be sold (disposed of)** outright (freehold). It can only be leased, and that lease must not exceed **ninety-nine years**. This prevents governments from permanently giving away national assets.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection from Land Grabbing	This article gives you the legal authority to sue the government or an individual who attempts to illegally seize or sell public land, such as a school playground, public park, or forest reserve.
Right to Natural Resources	All mineral resources (gold, oil, titanium) belong to the public (Clause 1e). You have the right to demand that the revenue generated from these resources benefit the nation, not just private interests.
Long-Term Security	The 99-year lease limit ensures that major public assets will eventually revert to the State for future generations to decide on their use.

III. Real-World Example

- **Scenario:** A powerful individual attempts to construct a commercial property on land designated as a public waterfront or recreational park.

- **Action based on Article 62:** A civil society organization or affected citizen files a petition citing the land's classification as public land held **in trust** (Clause 2). They argue that the attempted use is illegal because it violates the terms of the trust and the restriction on permanent disposal (Clause 4).
- **Result:** The courts have used this article to **revoke titles** for land illegally acquired from forest reserves, beaches, and public parks, affirming that the government's role as a "trustee" of public land is enforceable by every citizen.

Article 63: Community Land

63. (1) Community land shall vest in and be held by communities **identified on the basis of ethnicity, culture or similar interest**.

(2) Community land consists of—

(a) land lawfully registered in the name of group representatives;

(b) land lawfully held, managed or used by specific communities as **communal land**;

(d) **ancestral lands** and lands traditionally occupied by hunter-gatherer communities;

(e) land not otherwise lawfully categorized as private or public land.

(3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.

(4) Community land shall not be **disposed of or otherwise used except in accordance with legislation** enacted by Parliament to regulate the land rights of communities.

I. Simple Explanation

Article 63 formally creates and defines **Community Land**, recognizing the rights of specific groups based on their historical and cultural ties to the land. This category replaced the old "Trust Land" system.

1. **Ownership (Clause 1):** Community land is owned and managed by the communities themselves, identified by **ethnicity, culture, or similar interests** (e.g., pastoralists, fishermen).
2. **Definition (Clause 2):** It includes **ancestral lands** and those traditionally occupied by specific groups, as well as lands previously registered under group titles.
3. **County as Trustee (Clause 3):** If the community land is **unregistered**, the County Government holds it **in trust** for that community until it is officially registered in the community's name.
4. **Protection from Sale (Clause 4):** Community land has strong legal protection. It **cannot be sold or used** without following specific legal procedures established by the *Community Land Act*, which requires the free and informed consent of the community.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Ancestral Land	If you belong to a community with historical ties to a specific region, this article gives you the right to demand the formal recognition and registration of that land as Community Land.
Protection from Eviction	Your community cannot be illegally evicted from its traditional lands. Any proposed development must involve the community and comply with their rights.
Right to Self-Management	Your community has the right to decide how to use, manage, and benefit from the land, subject only to the constitutional principles of sustainability and fairness.

III. Real-World Example

- **Scenario:** A foreign investor attempts to begin a large tourism project on land traditionally used by an indigenous community for its livelihood and cultural rituals.
- **Action based on Article 63:** The community challenges the project in court, arguing that the land is **ancestral land** (Clause 2d) and therefore **Community Land**. They cite the *Community Land Act*, which requires a formal process, including environmental impact assessment and the **free, prior, and informed consent (FPIC)** of the community, before any disposal or use can occur.
- **Result:** The courts would likely issue an injunction (stop order) against the project until the constitutional and statutory requirements for community consent are fully met, upholding the community's collective rights over their land.

Article 64: Private Land

64. Private land consists of—

- (a) **Registered land** held by any person under **freehold tenure**;
- (b) **Registered land** held by any person under **leasehold tenure**; and
- (c) Any other land declared **private land** under an Act of Parliament.

I. Simple Explanation

Article 64 is the simple definition of **Private Land**, which is the category covering land owned by individuals, families, businesses, or non-governmental organizations.

1. **Registered Ownership:** For land to be considered private, it must be **registered** under the owner's name (an individual or a company).

2. **Freehold Tenure (Clause a):** This is the highest form of private ownership. It means the owner holds the land indefinitely (forever, subject only to environmental laws, zoning, and government compulsory acquisition).
3. **Leasehold Tenure (Clause b):** This means the owner holds the land for a specific, defined period (e.g., 99 years) granted by the lessor, who is usually the National, County, or Community Government. Once the lease term expires, the land reverts to the lessor.
4. **Flexibility:** Parliament can pass laws to define other small categories of land as private if needed (Clause c).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Secure Ownership	This article confirms that your private property (whether a freehold title or a lease for your home/business) is legally protected against arbitrary taking or unlawful seizure (linking to Article 40).
Right to Deal in Land	You have the right to transact, mortgage, inherit, sell, or develop your registered private land, subject only to planning regulations and zoning laws.
Clarity of Title	The emphasis on registered land ensures transparency. Your ownership is only valid and enforceable if it is documented in the national or county land registers.

III. Real-World Example

- **Scenario:** A citizen holds a **freehold title deed** for a residential plot. A local politician attempts to claim the land, arguing that the plot was originally public land.
- **Action based on Article 64:** The citizen files a case in the Environment and Land Court, presenting their registered title. They cite the constitutional recognition of their property as **Private Land** held under freehold tenure.
- **Result:** Since the Constitution explicitly recognizes registered freehold land as private, the burden is on the challenger to prove the title was obtained illegally. If the title is valid, the court will protect the citizen's property rights, often issuing an order permanently barring the trespasser or claimant, reaffirming the security provided by a registered private title.

Article 65: Regulation of Land Use and Property

65. (1) A person who is **not a citizen** may hold land on the basis of **leasehold tenure only**, and any such lease, however granted, shall not **exceed ninety-nine years**.

(2) If a person who is not a citizen holds land under freehold tenure, the land shall be converted to **ninety-nine year leasehold** from the effective date of this Constitution.

(3) The preceding provisions of this Article shall not apply to land held in trust for a group of people recognised as citizens.

I. Simple Explanation

Article 65 sets strict restrictions on how **non-citizens** can own land in Kenya. This is a measure designed to protect national sovereignty over land resources.

1. **Non-Citizen Restriction (Clause 1):** A foreign national or foreign-owned entity can **only** acquire land on a **leasehold basis**, and that lease cannot exceed **99 years**. They cannot hold freehold (permanent) land.
2. **Conversion (Clause 2):** To ensure compliance, any freehold land held by a non-citizen before the 2010 Constitution was enacted was automatically converted into a **99-year leasehold** from the date the Constitution took effect (August 27, 2010).
3. **Trust Exception (Clause 3):** This restriction does not affect land held by a non-citizen in trust *for* a group of Kenyan citizens (e.g., an international NGO holding land on behalf of a local community).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
National Security over Land	This article ensures that the country's limited resource—land—is protected from permanent foreign control, enhancing national sovereignty and ensuring its long-term availability for future Kenyan generations.
Clarity on Foreign Investment	If you are a Kenyan dealing with foreign investors, this article sets the clear legal limit on the tenure they can acquire, ensuring transparency in investment contracts.
Protection of Trust Land	If your community benefits from land held in trust by a foreign entity (e.g., a charity), the constitutional protection ensures that the land is not subject to the 99-year conversion rule.

III. Real-World Example

- **Scenario:** A foreign company had bought a prime beach property in Mombasa in 1995 under a freehold title.
- **Action based on Article 65(2):** Upon the enactment of the 2010 Constitution, the freehold title was **automatically converted by operation of law** into a 99-year lease starting from August 27, 2010.
- **Result:** This company cannot sell or mortgage the land as freehold. At the end of the 99 years (around 2109), the land will revert to the State (or the lessor), ensuring the constitutional limit on foreign ownership is enforced. This clause was crucial in correcting historical imbalances where foreigners held vast tracts of land permanently.

Article 66: Regulation of Land Use

66. (1) The State may regulate the **use of any land**, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.

(2) The National Assembly shall enact legislation to regulate the manner in which any land may be used or sustained.

(3) Provision shall be made by legislation to enable the review of all grants of public land to establish their **propriety or legality**.

I. Simple Explanation

Article 66 confirms that the State has the legal authority to place controls on how private, public, or community land is used, even if you are the legal owner. Your ownership is not absolute; it is subject to the greater public good.

1. **Justifiable Regulation (Clause 1):** The government can introduce laws (like zoning laws, building codes, and environmental regulations) that control land use. These limitations must be for specific public interests, such as **public safety, public health, or land use planning**. This is why you cannot build a noisy factory next to a residential school.
2. **Legislative Mandate (Clause 2):** Parliament must pass detailed laws to regulate land use in a sustainable manner.
3. **Review of Past Grants (Clause 3):** This is a key transitional clause mandating Parliament to create a process to **review all past grants of public land** to determine if they were acquired legally and properly. This gave the government the power to investigate and revoke illegally acquired titles (land grabbing).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Planned Environment	You have the right to demand that your local County Government enforce zoning and planning laws to protect your residential area from incompatible activities (like the establishment of polluting industries).
Protection of Legality	You are protected from the State taking your land under the guise of "regulation" unless that regulation is genuinely for a public purpose listed in the Constitution (e.g., public safety).
Basis for Revocation	This article provides the constitutional authority for the government to investigate and potentially revoke titles to land that was illegally grabbed from public resources in the past.

III. Real-World Example

- **Scenario:** A land owner in an area zoned for residential use decides to build a large warehouse and start commercial heavy trucking operations.
- **Action based on Article 66(1):** The County Government, citing the need for **land use planning** and **public safety/order**, issues a stop order. They enforce the relevant zoning laws enacted by Parliament under Clause (2).
- **Result:** The land owner would be legally compelled to stop the non-compliant development. If they challenge the order, the court will affirm that while they own the land (Article 40), that ownership is subject to the State's constitutional right to **regulate its use** (Article 66) for the collective good of the community.

Article 67: National Land Commission

67. (1) There is established the **National Land Commission**.¹

(2) The functions of the National Land Commission are—²

(a) to **manage public land** on behalf of the national and county governments;³

(b) to recommend a **national land policy** to the national government;

(c) to conduct **research** into land use and planning;

(d) to investigate present or historical **injustices in land** and recommend appropriate redress;

(e) to encourage the application of **traditional dispute resolution mechanisms** in land conflicts;

(f) to assess **tax** on land and premiums on land; and

(g) to initiate investigations into present or historical land injustices, either on its own initiative or upon complaint.

I. Simple Explanation

Article 67 establishes the **National Land Commission (NLC)** as the key independent constitutional body responsible for land management and reform in Kenya.

1. **Core Mandate:** The NLC's primary function is to **manage public land** (defined in Article 62) as the government's technical agent (Clause 2a).
2. **Reform and Justice:** The NLC is tasked with investigating present or historical **land injustices** (e.g., unfair land allocation, evictions) and recommending solutions (Clause 2d & 2g). It also encourages the use of **traditional methods** to solve land disputes (Clause 2e).
3. **Policy and Planning:** The Commission guides national land use through research, planning, and recommending national land policy (Clause 2b & 2c).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Redress for Injustice	If your community or family suffered historical land loss or unfair acquisition, you have the right to file a complaint with the NLC, which is constitutionally mandated to investigate and recommend redress.
Protection of Public Land	The NLC acts as a constitutional guardian of public land. You can report illegal land grabbing, and the NLC is obliged to investigate and recommend revocation of titles.
Accountability in Land Valuation	When the government compulsorily acquires your land (Article 40), the NLC is responsible for carrying out the valuation and advising on compensation, ensuring an impartial assessment.

III. Real-World Example

- **Scenario:** A community alleges that their ancestors were wrongly displaced from their traditional grazing land decades ago, and the land was illegally allocated to private individuals.
- **Action based on Article 67(2)(d) and (g):** The community files a formal complaint with the NLC. The NLC initiates an investigation into the historical injustice.
- **Result:** If the investigation confirms the injustice, the NLC recommends specific **redress** to the National or County Government (e.g., financial compensation, reallocation of equivalent public land, or mediation). This constitutional body provides the legitimate mechanism for addressing Kenya's painful and complex history of land disputes.

Article 68: Legislation on Land

68. Parliament shall enact legislation to **regulate the land sector** and in particular—

- (a) to regulate the **conversion of land** from one category to another;
- (b) to regulate the **restitution** of land to a person dispossessed of land or any interest in land;
- (c) to revise, consolidate and rationalise existing laws;
- (d) to prescribe minimum and maximum **land holding acreages** in respect of private land;
- (e) to regulate the manner in which any land may be **used or sustained**;
- (f) to provide for the **compulsory acquisition** of land;
- (g) to provide for the **settlement of land disputes**;
- (h) to enable the **review of all grants of public land** to establish their propriety or legality.

I. Simple Explanation

Article 68 is the **legislative roadmap** for land reform. It compels Parliament to pass comprehensive laws that create the detailed legal framework necessary to implement the broad land principles (Articles 60-67) established in the Constitution.

1. **Regulating Change (Clauses a, b):** Parliament must create laws for the smooth **conversion** of land between the three categories (Public, Community, Private). Crucially, it must create a mechanism for **restitution** (returning) of land to persons or communities who were wrongly dispossessed.
2. **Consolidation and Limits (Clauses c, d):** The old, complex land laws must be simplified and **rationalised**. Parliament also has the power to set **maximum and minimum sizes** for private land ownership (land holding acreages) to ensure fair distribution and prevent large, unproductive land banks.
3. **Enforcement and Review (Clauses f, g, h):** Laws must be passed to govern the process of **compulsory acquisition** (taking land for public use), establish courts and tribunals for **settling land disputes**, and create the process for **reviewing past land grants** to revoke illegally acquired titles.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Legal Certainty	This article ensures that the principles of land ownership are defined clearly in written laws, reducing ambiguity and preventing arbitrary administrative action.
Pathway for Restitution	If your family or community lost land unfairly in the past, this is the constitutional mandate for the State to create a legal process to return or compensate for that land.
Protection from Land Monopolies	The power to prescribe maximum land holding acreages (Clause d) is a tool designed to prevent excessive concentration of land ownership in the hands of a few.

III. Real-World Example

- **Scenario:** A family claims that a 100-acre piece of land in their village was taken from them illegally by a government official in the 1970s.
- **Action based on Article 68(b):** The family utilizes the procedures established in the *Land Act* and the *National Land Commission Act* (the laws passed by Parliament under this article). They file a complaint with the NLC for **restitution** of the land.
- **Result:** The legal framework created under Article 68 allows the NLC to investigate the claim. If the NLC finds the dispossession was illegal, it recommends to the government that the land title be revoked from the current owner and **restituted** to the rightful family, thereby fulfilling the constitutional promise to address historical injustices.

Article 69: Obligation in respect of the environment

69. (1) The State shall;

(a) ensure **sustainable exploitation, utilisation, management and conservation** of the environment and natural resources;

(b) work to achieve and maintain a tree cover of at least **ten per cent** of the land area of Kenya;

(c) **protect and enhance the intellectual property** in, and **indigenous knowledge** of, biodiversity and genetic resources of the communities;

(d) encourage **public participation** in the management, protection and conservation of the environment;

(e) establish **systems of environmental impact assessment, environmental audit and monitoring**; and

(f) eliminate processes and activities that are likely to **endanger the environment**.

(2) Every person has a duty to **co-operate** with State organs and other persons to protect and conserve the environment and ensure **ecologically sustainable development** and use of natural resources.

I. Simple Explanation

Article 69 defines the State's **active duties** regarding the environment (linking to the right to a clean environment in Article 42) and establishes a reciprocal **duty on every citizen** to participate in protection.

1. **State Duties (Clause 1):** The government must: manage natural resources sustainably; achieve a minimum **10% national tree cover**; **protect indigenous knowledge** related to biology and resources; involve the **public** in environmental decisions; and implement formal environmental assessment and monitoring systems.
2. **Citizen's Duty (Clause 2):** Every individual has a constitutional duty to **co-operate** with the government and others to conserve the environment and ensure that development is **ecologically sustainable** (i.e., meeting present needs without compromising the ability of future generations to meet theirs).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Sustainable Development	You can challenge any project (e.g., construction, manufacturing) that fails to meet the required environmental standards, arguing it violates the State's duty of sustainable exploitation .
Protection of Traditional Knowledge	If you belong to a community with unique knowledge about plants or resources, this article guarantees the protection of that knowledge as intellectual property, ensuring your community is credited and compensated if it is used commercially.
Right to Participate	You have the right to be informed about and participate in the Environmental Impact Assessment (EIA) process for any new development in your area.

III. Real-World Example

- **Scenario:** A mining company begins exploratory drilling in a sensitive wetland area without conducting a comprehensive **Environmental Impact Assessment (EIA)** and without consulting the local community.
- **Action based on Article 69(1)(e) and (d):** An environmental lobby group or a local resident files a case, demanding an immediate halt to the project, arguing that the State has failed its duty to establish a system of EIA and to encourage **public participation** in the management of the environment.
- **Result:** The courts would issue a **conservatory order** (stop order) on the project. This article is the constitutional bedrock for the *Environmental Management and Co-ordination Act (EMCA)*, which mandates that all projects potentially harming the environment must follow strict, participatory, and scientifically rigorous assessment processes.

Article 70: Enforcement of Environmental Rights

70. (1) If a person alleges that a right to a **clean and healthy environment** has been, is being or is likely to be **contravened** in relation to the person, the person may apply to a court for redress.

(2) On application, a court may make any order or give any directions as it considers appropriate—¹

(a) to **prevent, stop or discontinue** any act or omission that is harmful to the environment;²

(b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful³ to the environment; or⁴

(c) to provide **compensation** for any victim of a violation of the right to a clean and healthy environment.⁵

(3) An applicant does not have to demonstrate that any person has incurred loss or suffered injury.

I. Simple Explanation

Article 70 is the **enforcement mechanism** for the environmental right (Article 42). It grants every person the right to directly sue anyone (government or private) that harms or threatens the environment, and it gives the courts broad powers to intervene.

1. **Direct Access to Court (Clause 1):** You do not have to wait for the damage to happen; you can go to court if the environment is **likely to be contravened** (threatened).
2. **Locus Standi Relaxed (Clause 3):** This is highly significant: The person suing **does not have to prove they have suffered personal injury or loss**. This allows any concerned citizen or environmental group to sue purely in the **public interest** to protect nature.
3. **Powerful Remedies (Clause 2):** Courts are given massive power to intervene, including:
 - Ordering the polluter to **stop or discontinue** the harmful act (e.g., stopping a polluting factory).
 - Compelling a public officer (e.g., NEMA official) to take specific **preventative measures**.
 - Ordering **compensation** to be paid to victims.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Public Interest Litigation	You are empowered to be a constitutional guardian of the environment. You can sue to protect a forest or water source far from your home simply because it is a national asset.
Right to Immediate Relief	If your local river is being polluted, you can seek an immediate court order to stop the pollution before it causes permanent damage or widespread illness.
Protection from Passive Government	You can sue a government official or agency for failing to act to stop environmental harm, compelling them to perform their duties.

III. Real-World Example

- **Scenario:** A developer starts construction that threatens to destroy a major water catchment area used by thousands of people, but no one has yet fallen sick.
- **Action based on Article 70:** An environmental association files a case in the Environment and Land Court. Citing Clause (3), they argue that they do not need to show personal loss, only that the environment is **likely to be contravened**. They request an order to **stop** the construction (Clause 2a).
- **Result:** Article 70 is frequently used for landmark environmental protection cases. The court would issue an order halting the construction. The ability to sue without proving injury is what makes this article a potent tool for pre-emptive environmental protection.

Article 71: Agreements Relating to Natural Resources

71. (1) A transaction is subject to **ratification by Parliament** if it—¹²³⁴⁵

(a) involves the grant of a **right or concession** by or on behalf of any person, including the national government, to another person for the **exploitati⁶on of any natural resource of⁷ Kenya**; and⁸⁹¹⁰¹¹

(b) is entered into on or after the effective date.¹²¹³¹⁴

(2) Parliament shall enact legislation providing for the **classes of transactions** subje¹⁵ct to ratification under clause¹⁶¹⁷ (1).

I. Simple Explanation

Article 71 ensures that the exploitation of Kenya’s most valuable **natural resources** (like oil, gas, minerals, major forests, and fisheries) is not done in secret or without public consent. It demands **Parliamentary oversight** for all major deals.

1. **Mandatory Ratification (Clause 1):** If the government grants any company (local or foreign) the right to **exploit** any natural resource (Clause 1a), that agreement **must be approved by Parliament**. This applies to any deal signed after the 2010 Constitution came into effect (Clause 1b).
2. **Classes of Transactions (Clause 2):** Parliament is required to pass a law defining exactly which types of agreements—such as those above a certain value or involving specific resources—require this mandatory ratification.

II. Citizen’s Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability	This is the primary check on resource corruption. It ensures that lucrative agreements signed by the Executive (President/Cabinet) are subject to public debate, scrutiny, and approval by your elected representatives in Parliament before becoming legally binding.
Right to Transparency	You have the right to demand that the details of major mining, oil, or gas contracts be made public before they are ratified, ensuring that Kenya receives a fair deal and that environmental standards are included.
Protection of National Assets	The article prevents the long-term, permanent sale or secretive exploitation of national wealth by imposing a requirement for open, political ratification.

III. Real-World Example

- **Scenario:** The Ministry of Energy signs a multi-billion-shilling agreement with a multinational corporation granting them a license to drill and extract oil and gas reserves found in Turkana County.
- **Action based on Article 71:** Before the agreement can be implemented, the Cabinet Secretary must table the full contract before **Parliament** (both National Assembly and Senate). Parliament must then debate and vote to **ratify** (approve) the transaction.
- **Result:** If Parliament refuses ratification, the deal is **dead**, regardless of what the Executive negotiated. This constitutional step ensures that the political and economic interests of the Kenyan people are protected by their representatives against bad deals that could unfairly benefit foreign corporations while depleting national resources.

Article 72: Legislation Relating to the Environment

72. Parliament shall enact legislation to **give full effect** to the provisions of this Part.

I. Simple Explanation

Article 72 is the final mandate in the Environment and Natural Resources section. It is a concise but powerful instruction to **Parliament** to pass all the necessary detailed laws required to make the constitutional rights and duties in this Part effective.

1. **Legislative Duty:** Parliament must create a comprehensive set of laws that cover all aspects of environment and natural resources defined in **Articles 69, 70, and 71**.
2. **Full Effect:** This means the laws must not just repeat the Constitution but must provide the legal mechanisms (e.g., penalties, standards, procedures for EIAs, courts) needed to ensure the constitutional rights (clean environment, resource accountability) are **fully enforceable** on the ground.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Detailed Law	You are protected from the government saying, "There's no law for that." This article demands that Parliament fill any legal gap, ensuring that environmental protection and resource agreements are governed by clear, publicly debated laws.
Foundation of Environmental Acts	This article is the constitutional authority for existing laws like the <i>Environmental Management and Co-ordination Act (EMCA)</i> and the <i>Petroleum Act</i> , which provide the detailed rules you use to protect your community's environment.
Demand for Compliance	You can lobby your local MP to ensure that Parliament fulfills this constitutional mandate and passes new laws whenever a gap in environmental protection is identified.

III. Real-World Example

- **Scenario:** A new threat emerges, such as cyber-dumping (illegal disposal of electronic waste), which is not explicitly covered by existing environmental laws.
- **Action based on Article 72:** An environmental group lobbies Parliament to pass a specific **E-Waste Management Act**. They argue that the failure to regulate this new hazard prevents the **full effect** of the right to a clean environment (Article 42) and the State's obligation to eliminate processes that endanger the environment (Article 69).
- **Result:** This constitutional mandate compels Parliament to continuously review and update legislation to address new environmental and resource challenges, ensuring the law remains adequate to protect the constitutional rights of the people.



“Land must be managed transparently and justly. Without fairness in land allocation, there can be no social justice.” – Martha Karua

Chapter Six—Leadership and Integrity

Article 73: Responsibilities of Leadership

73. (1) Authority assigned to a State officer—

(a) is a **public trust** to be exercised in a manner that—

- (i) vests the sovereignty of the people (Article 1) in the State officer;
- (ii) serves the people, rather than the self-interest of the State officer; and
- (iii) upholds the dignity of the office and the nation; and

(b) generates the public's **confidence in the integrity of the office**.

(2) The guiding principles of leadership and integrity include—

(a) **selection based on personal integrity, competence and suitability;**

(b) **objectivity and impartiality** in decision-making, and ensuring that decisions are not influenced by nepotism, favouritism, or improper motives;

(c) selfless service;

(d) **accountability** to the public for decisions and actions; and

(e) discipline and commitment in service to the people.

I. Simple Explanation

Article 73 defines public office as a **public trust**, meaning the authority given to any leader (from the President to a local administrator) is held on behalf of the people and must be used to **serve the public interest**, not personal gain.

1. **Public Trust (Clause 1):** Every leader is a trustee of the people's **sovereignty**. Their actions must serve the people, uphold the **dignity of the office**, and inspire **public confidence** in the integrity of that office.
2. **Guiding Principles (Clause 2):** This sets the ethical standards for all leaders, emphasizing:
 - **Integrity and Competence:** Leaders must be chosen based on merit, character, and suitability.
 - **Impartiality:** Decisions must be objective, fair, and free from **nepotism, favouritism**, or corruption.
 - **Accountability:** Leaders must be held responsible for their actions and decisions.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Selfless Service	You have the right to expect all public officers to act in your best interest, without seeking bribes, using their office for personal enrichment, or showing bias.
Right to Accountability	This article is the foundation for anti-corruption and ethics laws. You can petition for the removal or investigation of any leader who breaches the public trust principle by engaging in corruption, nepotism, or favouritism.
Right to Merit-Based Decisions	This ensures government appointments and tender processes must be based on objectivity and competence , not on political connections, ethnicity, or bribery.

III. Real-World Example

- **Scenario:** A County Executive Committee member (CEC) uses their influence to ensure a lucrative construction tender is awarded to a company owned by their close relative, despite the relative's company not having the best technical proposal.
- **Action based on Article 73(2)(b):** A losing bidder or a concerned citizen challenges the award in court, citing a clear violation of the principles of **objectivity and impartiality** and a case of **favouritism/nepotism**.
- **Result:** The courts would likely nullify the tender award, affirming that the CEC, as a State Officer, violated the **public trust** (Clause 1) and the explicit ban on decisions influenced by improper motives (Clause 2b). The violation of Article 73 is often used as grounds for disciplinary action or removal from office, even if a full criminal charge has not yet been filed.

Article 74: Restriction on State Officers

74. A State officer shall **not be a director or shareholder in any company** or undertaking where such participation poses a real danger of **conflict of interest** in the discharge of their duties.

I. Simple Explanation

Article 74 sets a specific, crucial limit on the financial activities of State Officers to prevent conflicts of interest.

1. **Conflict Prohibition:** A State Officer (e.g., a Cabinet Secretary, Principal Secretary, or MP) is **banned** from holding director or shareholder positions in any company if that role creates a *real danger* of their **private financial interests** interfering with or influencing their official government duties.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Unbiased Decisions	You are protected from having government policy influenced by a leader's secret personal investments. For instance, a Cabinet Secretary for Health should not have a stake in a company that bids on government medical tenders.
Right to Demand Divestiture	You can demand that a public officer who holds conflicting business interests either divests (sells their shares/resigns as director) or resigns from public office.

III. Real-World Example

- **Scenario:** A newly appointed Principal Secretary (PS) in the Ministry of Water owns a large number of shares and is a non-executive director in a private firm that bids aggressively for government dam construction contracts.
- **Action based on Article 74:** A civil society organization files a complaint with the Ethics and Anti-Corruption Commission (EACC), citing the PS's financial interest as posing a **real danger of conflict of interest**.
- **Result:** The EACC would investigate and recommend that the PS immediately resign from the company or sell their shares. The PS must choose between the **public trust** of their office and their **private financial interest**. This article ensures that loyalty remains strictly with the public.

Here is the breakdown for **Article 75: Conduct of State Officers**, which details the specific actions that constitute a breach of ethics and integrity for anyone holding a public office.

Article 75: Conduct of State Officers

75. (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that **avoids**—

- (a) any **conflict between personal interests and public or official duties**;¹
- (b) compromising any **public or official interest in favour of a personal interest**; or²
- (c) demeaning the **office the officer holds**.³

(2) A person who **contravenes clause (1), or Article 76, 77 or 78**⁴—

- (a) shall be subject to the applicable **disciplinary process**; and
- (b) if the State officer is an appointed official, shall be **dismissed from office**.

(3) A person who has been dismissed or otherwise removed from office for a **contravention of the provisions of this Chapter** is **disqualified from holding any other State office**.

I. Simple Explanation

Article 75 defines the standard of conduct for all State Officers, demanding that they maintain integrity and prioritize public duty in every aspect of their lives—official, public, and private.

1. **Avoidance of Conflict (Clause 1):** The officer's conduct must proactively avoid any situation where their **personal interests** conflict with their **public duties**. They must not compromise the **public interest** for any personal gain, and they must never act in a way that **demeans the office** they hold (e.g., public drunkenness, gross immorality, or violent conduct).
2. **Consequences (Clause 2):** Any violation of these conduct rules or other key integrity articles (76, 77, 78) leads to a **disciplinary process**. If the officer was appointed (not elected), the law mandates **dismissal from office**.
3. **Disqualification (Clause 3):** This is the strongest penalty. Any person who is removed from a State office for violating the **Leadership and Integrity Chapter** (Chapter Six) is permanently **banned** from holding any other State office in the future.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Ethical Leadership	You are protected from leaders whose private misconduct or financial self-interest compromises the government's integrity or the dignity of your nation.
Right to Demand Dismissal	If an appointed official is proven to have breached integrity rules (e.g., by awarding contracts to family members), you have the right to demand that the process for their dismissal is initiated, and that they are permanently barred from public service.
Protection from Nepotism	This reinforces the principle that personal connections must never come before the public or official interest (Clause 1b).

III. Real-World Example

- **Scenario:** A County Chief Officer is found to have used a government vehicle and fuel card for their personal use (e.g., running their private farm business) over several months.
- **Action based on Article 75(1):** The Ethics and Anti-Corruption Commission (EACC) initiates an investigation. They find that the officer compromised **public or official interest in favour of a personal interest** (Clause 1b) and potentially demeaned the office (Clause 1c) through fraudulent conduct.
- **Result:** The Chief Officer is subjected to the disciplinary process (Clause 2a). As an appointed official, the Public Service Commission or the County Public Service Board must dismiss them. The dismissal would be recorded as a contravention of Chapter Six, leading to their **permanent disqualification** from holding any other State office (Clause 3), sending a strong message against misuse of public resources.

Article 76: Financial Probity of State Officers

76. (1) A State officer shall **not use their office to improperly enrich themselves** or others.

(2) A State officer whose **personal financial or business interests** conflict with a public duty shall immediately—

(a) disclose the nature of the conflict; and

(b) withdraw from the matter.

(3) A State officer shall **not solicit or accept a gift or benefit**—

(a) that might reasonably be seen as influencing the officer to be **derelect in duty**; or

(b) that the officer is prohibited from receiving by any legislation.

(4) A State officer shall **declare** to the relevant Commission, **incomes, assets and liabilities** of the officer, spouse and dependent children.

(5) Parliament shall enact legislation to establish procedures for the effective financial declaration required under clause (4).

I. Simple Explanation

Article 76 focuses specifically on the **financial integrity** of State Officers, serving as the constitutional foundation for anti-corruption law.

1. **No Improper Enrichment (Clause 1):** This is a direct ban on corruption and abuse of office for personal financial gain.
2. **Disclosure of Conflict (Clause 2):** If a State officer encounters a situation where their private finances conflict with their public duty, they must immediately **disclose** the conflict and **withdraw** from making the decision (e.g., stepping out of a Cabinet meeting discussing a policy that benefits their company).
3. **Gifts and Bribes (Clause 3):** An officer cannot ask for or accept any gift or benefit that could be viewed as a **bribe** intended to make them neglect their duties.
4. **Declaration of Wealth (Clause 4):** All State Officers must legally **declare their wealth** (incomes, assets, and liabilities) annually to the EACC. This declaration must also cover their **spouses and dependent children**, ensuring transparency and preventing the hiding of wealth through family members.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Uncorrupted Service	This article provides the ultimate constitutional standard against which corruption is measured. Any public officer enriching themselves improperly is breaching this fundamental covenant.
Protection from Undue Influence	You are protected from government policy being shaped by bribes or gifts, as officers are legally bound to refuse any benefit that could compromise their duty.
Right to Transparency	The declaration of wealth requirement is a tool for public accountability. If a leader's wealth suddenly balloons after taking office, they can be scrutinized, as their assets are formally recorded.

III. Real-World Example

- **Scenario:** A Senator, after voting for a controversial land bill, receives a plot of land as a "gift" from a real estate developer shortly afterward.
- **Action based on Article 76(3):** The Ethics and Anti-Corruption Commission (EACC) investigates the gift. They argue that the timing and nature of the gift might **reasonably be seen as influencing the officer to be derelict in duty** (or influencing their past vote).
- **Result:** The Senator would be investigated for breach of integrity. Failure to disclose the gift and the potential conflict is a violation of the Constitution. This article ensures that the acceptance of valuable benefits that could compromise judgment is treated as a severe ethical breach, leading to disciplinary action and potential disqualification from office (Article 75(3)).

Article 77: Restriction on Conduct of State Officers

77. (1) A full-time State officer shall **not participate in any other gainful employment**.

(2) Any appointed State officer shall not **hold office in a political party**.

(3) Parliament shall enact legislation to regulate the extent to which other State officers may engage in gainful employment.

I. Simple Explanation

Article 77 sets restrictions on the political and professional activities of State Officers to ensure they dedicate their full attention to public service and maintain political impartiality.

1. **Full-Time Employment (Clause 1):** Officers who are required to serve the State full-time (most Cabinet Secretaries, Principal Secretaries, Judges, Commissioners, etc.) are **banned from holding any other job or gainful employment**. Their sole focus must be their public duty.
2. **Political Neutrality (Clause 2):** Any **appointed** State officer (Judges, Commissioners, Public Servants, Chief Officers, etc.) cannot simultaneously hold an

office in a political party (e.g., Chairman, Treasurer, Secretary General). This ensures the neutrality of the public service.

3. **Regulation (Clause 3):** Parliament is mandated to pass a law defining the limits of secondary employment for other State Officers (like elected officials, who may hold business interests).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Committed Service	You have the right to demand that your full-time public servants are dedicated solely to their government role and not distracted by other jobs.
Right to Non-Partisan Service	This ensures that the Judiciary, the Public Service Commission, the Police, and other crucial appointed bodies serve the public impartially, regardless of who is in power. An appointed State officer cannot use their public office to advance a political party's agenda.
Protection from Administrative Bias	If an appointed administrative officer is also a political party official, their decisions could be biased. This article prevents that conflict of loyalty.

III. Real-World Example

- **Scenario:** A member of the Public Service Commission (PSC), an appointed State Officer, is elected as the Deputy Organizing Secretary of a major political party.
- **Action based on Article 77(2):** A civil society group or a concerned citizen challenges this position. They argue that the PSC member, as an appointed official, is barred from holding **office in a political party**.
- **Result:** The court would compel the individual to resign immediately from the political party office. The individual cannot hold both positions, as the Constitution prioritizes the non-partisan nature of the public service over political activity for appointed officers. Failure to resign would lead to dismissal from the PSC office (Article 75(2)).

Article 78: Citizenship and State Office

78. (1) A person is not eligible for election or appointment to a State office unless the person is a **citizen of Kenya**.⁵⁶

(2) A State officer or a member of the defence forces shall not hold **dual citizenship**.⁷⁸

(3) Clauses (1) and (2) do not apply to—¹⁰

(a) ¹¹the Judges of the superior courts;

(b) ambassadors, high commissioners and diplomatic staff; or

(c) any person whom Parliament may, by legislation, exempt.

I. Simple Explanation

Article 78 regulates the citizenship status of individuals holding State office, especially focusing on **dual citizenship** to protect national security and loyalty.

1. **Citizenship Requirement (Clause 1):** To be elected or appointed to any State office, you must be a **Kenyan citizen**.
2. **Dual Citizenship Ban (Clause 2):** A State officer **shall not hold dual citizenship**. This restriction is based on the need for undivided loyalty in sensitive public positions.
3. **Exceptions (Clause 3):** This ban is lifted for certain positions, including: **Judges of superior courts, Ambassadors/diplomats**, and any other positions Parliament exempts via law.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Unreserved Loyalty	You are protected from having State power wielded by individuals whose primary loyalty may be divided between Kenya and another sovereign nation.
Clarity on Office Holding	If you are a Kenyan citizen considering a role in the defence forces, you must be aware that you will be required to renounce any other citizenship you hold before taking up the office.
International Expertise	The exception for Judges and Ambassadors recognizes that these roles often benefit from international experience, allowing highly qualified dual citizens to serve in these specific capacities.

III. Real-World Example

- **Scenario:** A Kenyan citizen who also holds Canadian citizenship is appointed as a Principal Secretary (PS), which is a full State Office not listed in the exceptions.
- **Action based on Article 78(2):** A concerned citizen or a political rival challenges the appointment in court. They argue that the PS is a State Officer who is banned from holding **dual citizenship**.
- **Result:** The court would declare the appointment invalid. The individual would be required to immediately renounce their Canadian citizenship and confirm their single Kenyan citizenship before they could legally take up the role, confirming the enforcement of the loyalty requirement for State Officers.

Article 79: Legislation on Leadership

79. Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, and to prescribe the legal and ethical requirements for all public officers.

I. Simple Explanation

Article 79 is the constitutional mandate for the creation of the country's primary anti-corruption agency.

1. **Mandate to Legislate:** Parliament is required to pass a law to achieve two things:
 - **Establish Anti-Corruption Body:** Create the **Ethics and Anti-Corruption Commission (EACC)** as an independent agency.
 - **Define Requirements:** Pass laws detailing the legal and ethical standards for **all public officers** (not just State Officers). This is the basis for the *Leadership and Integrity Act*.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to an Anti-Corruption Body	This guarantees that the government will always have a specific, independent agency (EACC) dedicated to investigating and combating corruption and enforcing the integrity rules of Chapter Six.
Clarity on Ethical Standards	Every public servant, from the lowest clerk to the highest official, must adhere to the legal and ethical requirements prescribed by Parliament under this article.

III. Real-World Example

- **Scenario:** The government attempts to weaken the independence of the Ethics and Anti-Corruption Commission (EACC) by placing it under a government ministry.
- **Action based on Article 79:** A civil society organization challenges the move in court, citing the constitutional requirement that Parliament enact legislation to establish the EACC as an **independent** body.
- **Result:** The court would immediately rule the government's action unconstitutional, affirming that the EACC's independence is directly guaranteed by this article, ensuring it can investigate corruption without political interference.

Article 80: Status of Previous Leadership Provisions

80. (1) If this Chapter requires legislation to be enacted to give effect to a particular provision, that legislation shall be enacted within the period specified in the Fifth Schedule.

(2) The provisions of Article 75 shall come into effect one year after the effective date.

(3) Until the legislation envisaged in clause (1) is enacted, the law on ethics and integrity as applicable immediately before the effective date, shall continue to apply subject to this Constitution.

I. Simple Explanation

Article 80 provided the transitional rules for the implementation of the new, strict integrity rules of Chapter Six.

1. **Timeline for Laws (Clause 1):** Parliament was given specific deadlines (in the Fifth Schedule) to pass the crucial integrity laws (like the *Leadership and Integrity Act*).
2. **Delayed Effect (Clause 2):** The stringent conduct rules of **Article 75** (on avoiding conflicts of interest and demeaning the office) were intentionally given a **one-year grace period** after the Constitution took effect, allowing State Officers time to adjust their affairs (e.g., divest from conflicting businesses).
3. **Temporary Law (Clause 3):** Until the new laws were passed, the old (pre-2010) ethics and integrity laws remained in force, provided they were consistent with the new Constitution.

II. Citizen's Right & Personal Impact

- **Right to Timely Reform:** This article obligated Parliament to act quickly to ensure the new integrity laws were in place, preventing the integrity chapter from remaining just a promise.
- **Clarity during Transition:** It ensured that there was never a legal vacuum—leaders were always governed by a code of conduct, even during the transition period.

III. Real-World Example

- **Scenario:** In 2011, a newly elected MP argued that since Parliament had not yet passed the new *Leadership and Integrity Act*, they were not subject to any integrity standards.
- **Action based on Article 80:** A citizen or body like the EACC would point to Clause (3), which stated that the **old ethics laws continued to apply** subject to the Constitution. The core constitutional principles (like avoiding conflicts) also applied directly after the one-year delay.
- **Result:** This article ensured accountability was maintained throughout the implementation phase and prevented leaders from exploiting the period before the new laws were fully enacted.



“Kenya needs leaders who stand for something greater than themselves; leaders who stand for justice.” – Raila Odinga.

Chapter Seven: Representation of the People

Article 81: General Principles for the Electoral System

81. The electoral system shall comply with the following principles—

- (a) **freedom of citizens** to exercise their political rights under Article 38;¹
- (b) not more than **two-thirds of the members** of elective public bodies shall be of the same gender;²
- (c) **fair representation** of persons with disabilities ³and other **marginalised groups**;
- (d) **universal suffrage** based on the aspiration for fair representation and equality of vote; and
- (e) **free and fair elections**, which are—
 - (i) by secret ballot;
 - (ii) free from violence, intimidation, improper influence or corruption;
 - (iii) conducted by an independent body (IEBC);
 - (iv) transparent; and administered in an impartial, neutral, efficient, accurate and accountable manner.

I. Simple Explanation

Article 81 establishes the high constitutional standards that **all elections** in Kenya must meet to be considered legitimate. It defines the core values of the electoral system.

1. **Freedom and Rights (Clauses a & d):** The system must guarantee the **political freedom** of every citizen (Article 38) and be based on **universal suffrage** (all adults can vote). Every person's vote must carry **equal weight** (equality of vote).
2. **Inclusivity (Clauses b & c):** The system must be designed to ensure **gender balance** (the famous **two-thirds gender rule**), meaning no elective body can have more than two-thirds of its members being of the same gender. It must also ensure **fair representation** for persons with disabilities and other **marginalised groups**.
3. **Free and Fair Standard (Clause e):** This sets out five mandatory conditions for elections:
 - **Secrecy and Safety:** Voting must be by **secret ballot** and free from **violence, intimidation, or corruption**.
 - **Integrity:** Elections must be **transparent** and conducted by an **independent body** (the IEBC) in an **impartial, neutral, efficient, accurate, and accountable manner**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to a Protected Vote	You have the right to cast your vote secretly, without fear of violence or intimidation, and to demand that the process be free of bribery and corruption.
Right to Fair Results	If an election fails to meet the standards of transparency, accuracy, or impartiality (Clause 81(e)), you have the constitutional basis to challenge the results in court.
Right to Representation	You can demand that Parliament enact laws that meet the two-thirds gender rule and ensure that marginalized communities are fairly represented in elected assemblies.

III. Real-World Example

- **Scenario:** A losing presidential candidate files a petition to the Supreme Court challenging the results, arguing that although the physical voting was peaceful, the process of **tallying and transmission** of results lacked **transparency** and **accuracy**.
- **Action based on Article 81(e):** The court uses Article 81(e)(iv) and (v) as the **constitutional benchmark**. The petitioner argues that the IEBC failed to administer the election in an **accountable and transparent manner**.
- **Result:** In the landmark 2017 presidential petition, the Supreme Court used this very article to annul the election, ruling that the process failed to meet the constitutional standard of **free and fair elections** and demanding that the IEBC ensure strict adherence to the principles of **transparency and accountability** in the repeat election

Article 82: Legislation on Elections

82. (1) Parliament shall enact legislation to **regulate**—

- (a) the **nomination** of candidates;
- (b) the **registration of voters** and the compilation of a comprehensive register of voters;
- (c) the **conduct of elections** and referenda;
- (d) the **qualifications of candidates**;
- (e) the **electoral disputes** and the resolution of those disputes;
- (f) the **monitoring and observation** of elections; and
- (g) the **development and funding of political parties**.

(2) Legislation required by clause (1) shall ensure that—

- (a) **appropriate structures and mechanisms** are in place to ensure the fair administration of the electoral process; and

(b) **not more than two-thirds** of the members of statutory and constitutional commissions shall be of the same gender.

I. Simple Explanation

Article 82 is the constitutional command that **Parliament** must create the detailed legal framework—the rules and procedures—for holding all democratic exercises in Kenya, ensuring fairness and compliance with the general principles of Article 81.

1. **Mandate to Regulate (Clause 1):** Parliament must pass laws (like the *Elections Act*, *Political Parties Act*, etc.) covering every technical aspect of elections, including how **candidates are nominated**, how the **voter register is compiled**, how **disputes are resolved**, and how **political parties are funded**.
2. **Enforcing Fairness (Clause 2a):** These laws must establish the right **structures and mechanisms** to ensure the entire process, from start to finish, is administered fairly (e.g., establishing specific courts for electoral disputes, transparent tallying systems).
3. **Gender Balance in Commissions (Clause 2b):** This extends the **two-thirds gender rule** (from Article 81) to all **statutory and constitutional commissions**, requiring that their membership must not have more than two-thirds of the same gender.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to a Clear Process	This article ensures that the rules for becoming a voter, registering a party, or becoming a candidate are clear, written in law, and cannot be changed arbitrarily by the electoral body.
Protection of Integrity	You have the right to demand that Parliament passes strong laws on political party funding (Clause 1g) and electoral disputes (Clause 1e), ensuring that money and legal wrangling do not derail the democratic process.
Right to Representation in Governance	The constitutional requirement for gender balance (Clause 2b) in public commissions ensures that bodies which oversee governance, like the Public Service Commission or the Judicial Service Commission, are structurally diverse.

III. Real-World Example

- **Scenario:** After an election, it is discovered that the law does not specify the timeline for the Independent Electoral and Boundaries Commission (IEBC) to audit the register of voters before the next election.
- **Action based on Article 82(1)(b):** A civil society organization files a case seeking a directive to compel Parliament to pass a specific amendment to the *Elections Act*. They argue that the lack of a clear timeline for auditing the **register of voters** means Parliament has failed its constitutional mandate under Article 82 to **regulate** this process effectively.
- **Result:** The courts have often used Article 82 to direct Parliament to remedy legislative gaps (like the lack of a two-thirds gender implementation law) to ensure the electoral framework is robust and fully compliant with the rights and principles set out in the Constitution.

Article 83: Registration of Voters

83. (1) A citizen who is eighteen years of age or older and, if registered, is eligible to vote in any election or referendum under this Constitution.

(2) Any citizen who qualifies to be registered as a voter shall be so registered upon application.

(3) Legislation enacted under Article 82 shall provide for the following:

(a) **closure of the voters' register** at least sixty days before a general election;

(b) **progressive registration** of citizens residing outside Kenya and the conditions for their participation in elections;

(c) a continuous process of **updating the voters' register**; and

(d) rules for the **inspection of the voters' register** and the mechanism for challenging the inclusion in or removal from the register of any name.

I. Simple Explanation

Article 83 establishes the constitutional requirements for voting eligibility and mandates Parliament to create a clear, inclusive, and transparent system for maintaining the national register of voters.

1. **Voting Age (Clause 1):** The minimum age to vote in Kenya is **18 years old**.
2. **Right to Registration (Clause 2):** Any eligible citizen who applies to be registered **shall be registered**. The State cannot arbitrarily deny registration to a qualified applicant.
3. **Key Processes (Clause 3):** The law must ensure:
 - **Pre-Election Cutoff:** The voter registration process must **close at least 60 days** before a general election to allow time for auditing and preparing the final list.
 - **Diaspora Voting:** The electoral body must gradually implement a system for **progressive registration** of Kenyan citizens living **outside Kenya** (the diaspora) and allow them to vote.
 - **Integrity:** The register must be **continuously updated** and must allow for **public inspection** and a mechanism for challenging the inclusion or removal of names (scrutinizing the register).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to be Counted	If you are 18 or older, you have the absolute right to be registered to vote, and the State must provide the necessary facilities to enable this.
Protection of Fair Elections	The rules on inspection and challenge of the register (3d) are your legal tool to demand that the electoral roll is accurate, preventing fraudulent entries or the deletion of valid voters.
Right to Participate Abroad	If you are a Kenyan citizen living in the diaspora, this is the constitutional basis for demanding that the electoral body expands voting services to your country of residence.

III. Real-World Example

- **Scenario:** The Independent Electoral and Boundaries Commission (IEBC) announces that it will only allow Kenyan citizens in South Sudan and Rwanda to register for the diaspora vote, excluding other countries with large Kenyan populations.
- **Action based on Article 83(3)(b):** A diaspora organization files a petition, arguing that the IEBC's limited rollout violates the constitutional principle of **progressive registration** of citizens residing **outside Kenya** and the right to non-discrimination (Article 27).
- **Result:** The High Court, citing Article 83(3)(b), has compelled the IEBC to expand the registration and voting process to more countries, ruling that the rollout must be done in a reasonable, non-discriminatory, and systematic manner to fulfill the constitutional mandate of diaspora inclusion.

Candidates for election and political parties to comply with code of conduct.

84. In every election, all candidates and all political parties shall comply with the code of conduct prescribed by the Independent Electoral and Boundaries Commission.

85. Eligibility to stand as an independent candidate.

1. Any person is eligible to stand as an independent candidate for election if the person—

a. is not a member of a registered political party and has not

been a member for at least three months immediately before the date of the election; and

b. satisfies the requirements of;

i. Article 99 (1) (c) (i) or (ii), in the case of a candidate for election to the National Assembly or the Senate, respectively; or

ii. Article 193 (1) (c) (ii), in the case of a candidate for election to a county assembly.

Article 86: Voting

86. At every election, the Independent Electoral and Boundaries Commission shall ensure that—

- (a) whatever voting method is used, the system is **simple, accurate, verifiable, secure, accountable and transparent**;
- (b) the votes cast are **accurately counted, tabulated and publicly declared** immediately after polling at each **polling station**;
- (c) the results from the polling stations are **promptly collated and publicly declared** at each constituency and national tallying centre; and
- (d) appropriate structures and mechanisms are put in place to eliminate electoral malpractices.

I. Simple Explanation

Article 86 dictates the standards and procedure for the **actual process of voting and tallying votes**. It is the main constitutional guarantee of electoral integrity at the ballot box.

1. **Integrity of Method (Clause a):** The system (whether manual or electronic) must be **simple, accurate, verifiable** (can be recounted and confirmed), **secure, accountable, and transparent**.
2. **Public Declaration at Polling Station (Clause b):** This is critical: Votes must be **counted and publicly declared immediately** after polling closes **at the polling station itself**. This ensures that results are determined at the grassroots level and prevents fraud during transportation.
3. **Prompt Tallying (Clause c):** The results publicly announced at the polling stations must be **promptly collated and publicly declared** at the constituency and national levels.
4. **Elimination of Malpractices (Clause d):** The IEBC is responsible for proactively designing systems to **eliminate electoral malpractices**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Verification	The constitutional requirement that the system be verifiable (86a) is the basis for demanding transparency. You can physically confirm the result announced at your local polling station against the final national tally.
Right to Grassroots Results	The result announced at the polling station (Clause 86b) is legally final for that station. This prevents arbitrary changes being made during the collation process.
Protection from Fraud	This article ensures that the IEBC cannot use a complicated, opaque system; the process must be clear enough for agents, monitors, and voters to follow and verify.

III. Real-World Example

- **Scenario:** During the national tallying process, the IEBC attempts to announce a national result that contradicts the publicly declared results from numerous individual polling stations.
- **Action based on Article 86:** The Supreme Court, citing Article 86(b) and (c), has established the **polling station results as final**. Any attempt to alter or override the results announced at the polling station is a constitutional violation.

Result: In electoral petitions, courts treat the **public declaration at the polling station** as the most accurate reflection of the popular will. If there is a dispute, the court relies on the publicly available polling station result forms (Forms 34A) to verify the final tally, enforcing the principle of **verifiable and true elections**.

Article 87: Electoral Disputes

87. (1) Parliament shall enact legislation to establish mechanisms for the timely settling of electoral disputes.

(2) Petitions concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the results by the Independent Electoral and Boundaries Commission (IEBC).

(3) A petition concerning an election shall be heard and determined within six months of the date of filing the petition.

I. Simple Explanations

Article 87 guarantees that any disputes arising from an election must be settled through a clear legal process that is both timely and efficient, ensuring that political uncertainty does not drag on indefinitely.

Legal Mandate (Clause 1): Parliament must create the legal framework and institutions (like the Election Courts) necessary for the timely settling of electoral disputes.

Filing Deadline (Clause 2): For all elections other than President (e.g., Governor, MP, MCA), the legal challenge (petition) must be filed in the competent court within 28 days of the result being officially declared.

Determination Timeline (Clause 3): To ensure stability, the courts are constitutionally mandated to hear and issue a final judgment on the petition within six months of the date the petition was filed.

Note: The timeline for challenging a Presidential election is different and is set out in Article 140, which requires filing within 7 days and determination within 14 days.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Challenge If you are a candidate or a voter, you have the constitutionally guaranteed right to challenge a result you believe was fraudulent, and that right cannot be blocked by overly strict or vague legal procedures. **Right to Stability** The strict 28-day filing limit and the six-month determination limit ensure that elected officials can take office and that the country can quickly move past electoral uncertainty and focus on governance. **Efficiency of Justice** This article compels the Judiciary to treat electoral petitions with urgency and efficiency, ensuring that disputes are resolved while the evidence is fresh and the political momentum is current.

III. Real-World Example

Scenario: The IEBC declares the winner of a gubernatorial election on August 15th. The losing candidate believes the results were manipulated.

Action based on Article 87(2): The losing candidate has until September 12th (28 days later) to file their election petition in the High Court. If they file on September 1st, the High Court must hear and decide the entire case by March 1st of the following year (six months later) as per Clause (3).

Result: This article has been instrumental in ensuring that the Judiciary remains the ultimate arbiter of electoral disputes. The Supreme Court and the High Court have repeatedly upheld these timelines, often ruling that petitions filed even one day late are invalid, thereby strictly enforcing the constitutional requirement for judicial efficiency and electoral stability.

Article 88: Independent Electoral and Boundaries Commission (IEBC)

88. (1) There is established the Independent Electoral and Boundaries Commission (IEBC).

(2) The Commission shall consist of a chairperson and not more than eight other members.

(4) The Commission is responsible for conducting or supervising all elections and referenda and shall regularly review the names and boundaries of wards and constituencies and shall delimit them.

Note: Clause (3) sets the requirements for the Chairperson and members. Clause (5) requires Parliament to pass legislation regarding the IEBC.

I. Simple Explanation

Article 88 formally establishes the Independent Electoral and Boundaries Commission (IEBC) as the sole and independent body responsible for managing and safeguarding Kenya's democratic process.

Establishment and Composition: The IEBC is a constitutional commission consisting of a Chairperson and a maximum of eight other Commissioners (Clause 2).

Dual Mandate (Clause 4): The IEBC has two main functions:

Elections: Conducting or supervising all elections (Presidential, Parliamentary, County) and referenda (national votes).

Boundaries: Regularly reviewing and delimiting (defining) the boundaries of electoral areas (constituencies and wards) to ensure fair representation (linking to Article 89).

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Independent Management This guarantees that the democratic process is run by a constitutionally protected body, free from direction or control by the Executive (President) or any political party. **Right to Fair Representation** You can demand that the IEBC reviews your constituency or ward boundaries to ensure that the number of voters is roughly equal to that of neighbouring areas, fulfilling the "equality of vote" principle (Article 81). **Accountability of the Body** If the IEBC fails its duty to conduct a transparent or impartial election, you can hold the Commission itself accountable in court, as its mandate and independence are defined by this article.

III. Real-World Example

Scenario: The ruling political party publicly issues a directive to the IEBC instructing them on how to conduct voter registration.

Action based on Article 88: The IEBC, and citizens, would challenge this directive. The IEBC is an independent commission established under this article, meaning it is not subject to the direction or control of any person or authority, including the ruling party or the Executive.

Result: This article has been crucial in legal battles affirming the IEBC's autonomy. Courts frequently rule that attempts by political actors to interfere with the IEBC's operational or technical decisions are unconstitutional violations of the Commission's independence.

Article 89: Delimitation of Electoral Units

89. (1) The IEBC shall review the names and boundaries of constituencies at intervals of not less than eight years and not more than twelve years, but may do so at other times as provided in this Constitution.

(4) The IEBC shall ensure that the number of inhabitants in a constituency is, so far as possible, equal to the population quota (national average).

(5) The IEBC may vary the number of inhabitants in a constituency by a percentage equal to or less than—

(a) forty per cent for cities and sparsely populated areas; and

(b) thirty per cent for all other areas.

(9) The names and boundaries of wards shall be reviewed by the Commission at the same time as the review of constituencies.

I. Simple Explanation

Article 89 details the mandatory process for the IEBC to ensure fair representation by reviewing and setting the boundaries of constituencies and wards.

Review Timeline (Clause 1): Boundaries must be reviewed regularly—at least every eight years but not more than every twelve years.

Equality of Vote (Clause 4): The core goal is that the population of each constituency must be as close as possible to the population quota (the national average population per constituency).

Permitted Variation (Clause 5): The IEBC is allowed to deviate from the average, but the deviation cannot exceed 40% in large cities (where populations are dense) or sparsely populated areas (where populations are scattered), and 30% in all other regions. This allows smaller, remote communities to still have a representative without violating the "equality of vote" principle.

Wards Review (Clause 9): County wards must be reviewed simultaneously with the constituencies.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Equal Value Vote This is the safeguard that prevents political manipulation of boundaries (gerrymandering). Your vote should carry roughly the same weight as a vote cast anywhere else in the country. Right to Representation If you live in a marginalized or sparsely populated area, the 40% deviation rule ensures that you are not left without a representative due to low population density. Right to Challenge Unfair Boundaries You can petition the court to challenge new boundary proposals if they exceed the 30% or 40% deviation limit, or if they violate any other constitutional principle (e.g., they divide a community arbitrarily).

III. Real-World Example

Scenario: The IEBC proposes a new constituency boundary where the population is 50% lower than the national average, without classifying it as a sparsely populated area.

Action based on Article 89: A political party or concerned citizen challenges the proposal in the High Court, citing a direct violation of Clause (5), which limits deviations to 30% (or 40% in specified areas).

Result: The courts have confirmed the IEBC's independence but insist that the Commission's decisions must be made within the strict mathematical limits set by Article 89(5). Boundary reviews that violate the deviation limits are ruled unconstitutional, forcing the IEBC to revise the boundaries to comply with the principle of equality of vote.

- **Transparent** voting.

Article 90: Allocation of Party List Seats

90. (1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of county assemblies under 177(1)(b) and (c), shall be on the basis of **proportional representation by use of party lists**.

(2) The Independent Electoral and Boundaries Commission shall ensure that—

(a) each political party submits a list of all persons who would stand elected... within the time prescribed by national legislation;

(b) except in the case of the seats provided for under Article 98(1)(b) [Senate Women], each party list comprises the appropriate number of qualified candidates and **alternates between male and female candidates** in the priority in which they are listed; and

(c) except in the case of county assembly seats, each party list reflects the **regional and ethnic diversity** of the people of Kenya.

(3) The seats referred to in clause (1) shall be allocated to political parties **in proportion to the total number of seats won by candidates of the political party at the general election**.

I. Simple Explanation

Article 90 dictates the system for filling the special nomination slots—the **Party List Seats**—in both the National Assembly, the Senate, and the County Assemblies. These seats are designed to ensure the representation of women, youth, persons with disabilities (PWDs), and other marginalized groups.

1. **Proportional System (Clause 1):** These seats are not voted for directly by the public but are allocated to political parties based on **proportional representation**.
2. **Party Lists (Clause 2):** Each political party must submit a "closed list" of qualified nominees to the IEBC. This list must:
 - **Be Submitted on Time:** (Clause 2a).
 - **Ensure Gender Alternation:** The names must strictly alternate between men and women (with an exception for the Senate Woman Member list) (Clause 2b).
 - **Reflect Diversity:** The National Assembly and Senate lists must reflect the **regional and ethnic diversity** of the country (Clause 2c).
3. **Allocation Formula (Clause 3):** The number of seats a party receives is calculated **in proportion to the total number of elected seats** (constituency and ward seats) that

party won in the general election. If a party wins 10% of the elected seats, it gets 10% of the party list seats.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Fair Representation	This article ensures that the composition of Parliament reflects the overall support for political parties across the country, not just the regional winners.
Right to Diversity	If you are a woman, youth, PWD, or belong to a marginalized group, this article is the constitutional basis for your specific reserved seat in the legislature.
Protection from Nepotism	While parties choose the names, the lists must comply with clear constitutional rules on gender, regional diversity, and specific qualifications, providing a basis to challenge nominations based on favouritism.

III. Real-World Example

- **Scenario:** Following a general election, a major political party wins 40% of the directly elected seats in the National Assembly.
- **Action based on Article 90(3):** The IEBC uses the proportional formula to calculate that the party is entitled to 40% of the 12 nominated special seats (for workers, youth, and PWDs). The party then allocates the seats, strictly following the names listed in the original party list, which must have alternated gender and included the specified marginalized groups.
- **Result:** Courts often intervene when parties attempt to illegally **substitute** names on the list after the election or when the original list failed to meet the constitutional requirements on **gender alternation** (Clause 2b) and the inclusion of specific marginalized groups. Article 90 ensures that the system of proportional representation fulfills its goal of social inclusion.

Article 91: Basic Requirements for Political Parties

91. (1) A political party shall—

- (a) have a national character as prescribed by an Act of Parliament;
- (b) have a democratically elected governing body;
- (c) promote and uphold **national unity**;
- (d) abide by the **democratic principles** of good governance, transparency and accountability;
- (e) respect the right of all persons to participate in the political process;
- (f) respect and promote **human rights and fundamental freedoms**, and **gender equality and equity**;

(g) not use any language or image that is **sedition, incites violence, hatred, or discrimination**;

(h) not engage in or encourage **violence** by any means;

(i) not establish or maintain a **paramilitary force**;

(j) have a source of funds.

(2) A political party shall **not be founded on a religious, linguistic, racial, ethnic, regional, or sectional basis**, or engage in advocacy of discrimination on any such basis.

I. Simple Explanation

Article 91 ensures that political parties, which are crucial drivers of democracy, are organized internally in a **democratic and inclusive** way and, crucially, that they must promote **national unity** rather than division.

1. **National Character (Clauses 1a, c):** A party must not be a regional or ethnic club; it must have a **national character** (e.g., membership across multiple counties) and must actively promote **national unity**.
2. **Internal Democracy and Ethics (Clauses 1b, d, e, f):** Parties must practice internal democracy (having a **democratically elected governing body**), adhere to **transparency and accountability**, and respect human rights, especially **gender equality**.
3. **Prohibitions (Clauses 1g, h, i):** A party is strictly **banned** from using **hate speech, inciting violence**, or operating a **paramilitary force**.
4. **No Sectional Basis (Clause 2):** This is critical: A party **cannot be founded** on the basis of **religion, race, or ethnicity**. This prevents the formalization of tribal politics and ensures parties appeal to all Kenyans.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Unified Politics	This article protects you from political parties that seek to divide the country along ethnic or religious lines. You can demand that your party focuses on national issues.
Right to Internal Party Democracy	If you are a member of a political party, you can challenge party officials in court if they fail to hold democratic elections for their governing body or if they lack transparency in their finances.
Protection from Violence	The ban on paramilitary forces and incitement to violence provides a constitutional safeguard against political hooliganism and private militias.

III. Real-World Example

- **Scenario:** A group attempts to register a new political party and names it after a specific ethnic language and limits membership exclusively to people from one geographical region.
- **Action based on Article 91(2):** The Registrar of Political Parties would immediately reject the application. They would cite Article 91(2), arguing that the party is founded on a **linguistic and regional/ethnic basis**, which is **constitutionally prohibited**.
- **Result:** The courts have repeatedly affirmed that the principles in Article 91 are mandatory. They have upheld the de-registration of parties that fail to meet the **national character** requirement or those found to have engaged in ethnic **hate speech** (Clause 1g), ensuring that political competition remains inclusive and national.

Article 92: Legislation on Political Parties

92. Parliament shall enact legislation to **provide for—**

- (a) the **establishment and funding of political parties**;
- (b) the **functions and regulation of political parties**;
- (c) the establishment and funding of an **independent body** to regulate political parties;
- (d) the **resolution of disputes** within political parties.

I. Simple Explanation

Article 92 is the constitutional mandate for Parliament to create the *Political Parties Act*—the law that governs the operation, funding, and regulation of all political parties in Kenya.

1. **Comprehensive Law:** Parliament must pass a law that covers everything related to political parties, including how they are **established, funded, and regulated** (Clauses a and b).
2. **Independent Regulator:** The law must create an **independent body** (the Office of the Registrar of Political Parties - ORPP) to oversee and regulate the parties (Clause c).
3. **Dispute Resolution:** The law must set up a clear mechanism for solving **internal party disputes** (e.g., disputes over nominations or leadership elections) to ensure fairness and prevent internal chaos (Clause d).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Orderly Politics	This ensures that political parties operate under clear, written rules, providing a framework for stability and predictable nomination processes.
Right to Independent Oversight	You are protected from having political parties regulate themselves. The independent body (ORPP) ensures that parties comply with the constitutionally required standards of democracy, inclusion, and transparency.
Protection of Fairness in Nominations	If you are a candidate whose name is unfairly removed from a nomination list, this article ensures that a legal mechanism exists for you to challenge the party's decision immediately.

III. Real-World Example

- **Scenario:** A party member is unfairly denied the chance to run for a specific seat during the party primaries, in violation of the party's own internal rules.
- **Action based on Article 92(d):** The member files a case with the **Political Parties Disputes Tribunal (PPDT)**—the mechanism established by Parliament under this article.
- **Result:** The PPDT, backed by the constitutional mandate of Article 92, has the authority to hear the dispute and issue orders compelling the party to repeat the primary, include the candidate's name, or take disciplinary action against officials, thus enforcing internal party democracy.



“We must have leadership that believes in the rule of law, constitutionality and the truth” –
James Orengo

Chapter Eight: The Legislature

Article 93: Establishment of Parliament

93. (1) There is established a **Parliament of Kenya**.

(2) The Parliament of Kenya consists of the **National Assembly** and the **Senate**.

I. Simple Explanation

Article 93 formally creates and defines the structure of the national legislature of the Republic of Kenya, known as **Parliament**.

1. **Creation:** Parliament is established directly by the Constitution (Clause 1), meaning it is a permanent and independent State organ.
2. **Bicameral Structure:** Parliament is **bicameral** (two-chambered), consisting of two separate Houses: the **National Assembly** and the **Senate** (Clause 2). This dual structure ensures checks and balances in the legislative process.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Representative Government	This article guarantees that the country is governed by laws made by a Parliament composed of elected representatives.
Right to Checks and Balances	The bicameral nature ensures that laws affecting national issues (made by the National Assembly) and laws affecting counties (scrutinized by the Senate) must pass through two different Houses, promoting scrutiny and preventing rushed, poorly conceived legislation.
Clear Accountability	You know precisely which bodies are responsible for creating the laws that govern the Republic—the National Assembly and the Senate.

III. Real-World Example

- **Scenario:** The National Assembly attempts to pass a bill that significantly alters the revenue allocation formula for county governments without involving the Senate.
- **Action based on Article 93(2):** The Senate challenges the National Assembly in the Supreme Court. The Senate argues that since Parliament consists of both Houses, and the bill affects counties, it cannot be passed without the Senate's input, as required by the Constitution's division of labour between the two Houses.
- **Result:** The Supreme Court would likely affirm that any law concerning County Government matters requires the direct input and vote of the **Senate**. This structural interdependence, established by Article 93, ensures that devolution is protected and that the legislative process is followed accurately.

Article 94: Role of Parliament

94. (1) The legislative authority of the Republic is derived from the **people of Kenya** and, at the national level, is **vested in and exercised by Parliament**.

(2) Parliament may **not enact any law that establishes a religion** or a religious denomination.

(3) Parliament shall **protect this Constitution** and promote the **democratic governance** of the Republic.

(4) A member of Parliament, whether of the National Assembly or the Senate, has a **duty to represent the people** of their constituency or county and **further the national interest**.

I. Simple Explanation

Article 94 defines the **purpose and supreme power of Parliament**, which is to make laws and safeguard the Constitution, all while remembering that its authority comes from the citizens.

1. **Source of Authority (Clause 1):** Legislative power belongs to the **people** but is delegated to and exercised by **Parliament**. This confirms Parliament as the supreme law-making body.
2. **Separation of State and Religion (Clause 2):** Parliament is explicitly **banned** from enacting any law that establishes an official religion or denomination (reinforcing the secular nature established in Article 8).
3. **Constitutional Duty (Clause 3):** Parliament has a foundational duty to **protect the Constitution** and promote democracy.
4. **Representative Duty (Clause 4):** Every single member of Parliament (MP or Senator) has a dual duty: to represent the specific needs of their constituents/county **and** to advance the **national interest** as a whole.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Law-Based Governance	All laws affecting you—from tax rates to traffic rules—are made by the National Assembly and the Senate, providing legitimacy and accountability to the legal system.
Right to Demand National Interest	You can hold your representative accountable not only for local development (constituency/county) but also for how their decisions affect the entire nation (national interest).
Protection from Religious Law	This guarantees that the government will never impose laws based on a single religion, protecting the secular status of the Republic.

III. Real-World Example

- **Scenario:** A Member of Parliament votes against a national budget bill because they argue it does not allocate enough resources to their specific constituency, even though the budget is objectively necessary for national stability.
- **Action based on Article 94(4):** While the MP has a duty to represent their constituency, the MP also has a **duty to further the national interest**. Voting against a necessary national bill based solely on narrow local interests could be argued as a breach of this dual duty.
- **Result:** This article provides the ethical and constitutional balance: representatives must advocate for local needs, but they must ultimately put the collective good of the nation first. This clause is a powerful tool for civic groups demanding responsible national governance.

Article 95: Role of the National Assembly

95. (1) The National Assembly **represents the people of the constituencies** and special interests and **scrutinises the national budget**.

(2) The National Assembly **enacts legislation** concerning the national Government.

(3) The National Assembly **determines the allocation of national revenue** between the national and county governments, and **appropriates funds** for expenditure by the national Government.

(4) The National Assembly exercises **oversight** over national revenue and expenditure.

(5) The National Assembly **reviews the conduct** of the President, Deputy President and other State officers and may initiate the process of their **removal** from office.

(6) The National Assembly **approves declarations of war** and extensions of states of emergency.

I. Simple Explanation

Article 95 defines the primary functions and powers of the **National Assembly**, which is the lower and financially more powerful House of Parliament.

1. **Law-Making:** The National Assembly **enacts legislation** primarily affecting the **National Government** (Clause 2).
2. **Financial Control (The "Power of the Purse"):** This is its main role: it **determines the revenue allocation formula** (how national money is split between national and county governments), **appropriates (approves)** all national government expenditure (budget), and exercises **oversight** over this spending (Clauses 3 & 4).
3. **Oversight and Removal:** It scrutinizes the **conduct** of the Executive (President, Deputy President, Cabinet) and initiates the process for their **removal** through impeachment (Clause 5).

4. **War Powers:** It must **approve any declaration of war** or the extension of a state of emergency (Clause 6).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Budgetary Control	Your taxes are controlled and approved by the National Assembly. You have the right to demand transparency and scrutiny of the national budget by your MP.
Protection of Public Funds	The oversight role means the National Assembly is constitutionally bound to question the use of public funds, preventing waste and corruption in national ministries.
Accountability of the Executive	This is the basis for demanding that MPs initiate the removal process for a President or Deputy President who is found guilty of gross misconduct or violations of the Constitution.

III. Real-World Example

- **Scenario:** The Ministry of Finance spends an additional Ksh 10 billion without the prior approval of Parliament, claiming it was for an urgent matter.
- **Action based on Article 95(3) and (4):** The National Assembly's Public Accounts Committee (PAC) holds hearings. They argue that the Ministry violated the constitutional provision that the National Assembly **appropriates funds** and exercises **oversight** over expenditure.
- **Result:** The National Assembly can censure the Ministry, demand that the money be accounted for, and recommend disciplinary action against the Cabinet Secretary, affirming its constitutional role as the supreme financial watchdog of the national government.

Article 96: Role of the Senate

96. (1) The Senate **represents the counties** and serves to **protect the interests of the counties and their governments**.

(2) The Senate participates in the **law-making function** of Parliament by considering, debating and approving Bills concerning counties.

(3) The Senate determines the **allocation of national revenue among counties**, as provided in Article 217, and exercises **oversight over national revenue allocated to the county governments**.

(4) The Senate participates in the **oversight of State officers** by considering and determining any resolution to remove the President, Deputy President, or other State officers.

I. Simple Explanation

Article 96 defines the primary functions and powers of the **Senate**, the upper house of Parliament, whose core mandate is to safeguard the system of **devolved government** (County Governments).

1. **Representation of Counties (Clause 1):** The Senate's fundamental role is to **represent the interests of the 47 counties** and their governments.
2. **Law-Making (Clause 2):** It participates in making laws by debating and approving all Bills that **concern counties** (e.g., laws on health, education, county infrastructure).
3. **Financial Control (Clause 3):** It has the exclusive power to determine the **formula for allocating national revenue among the 47 counties** (the horizontal sharing formula) and exercises **oversight** over how county governments spend the money allocated to them.
4. **Oversight and Removal:** It participates in the removal of the President or Deputy President through impeachment proceedings (acting as the trial chamber).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Devolved Governance	The Senate acts as the constitutional firewall protecting your county government. If the National Government tries to undermine devolution, the Senate has the power to intervene.
Right to Fair Share of Funds	This ensures that the formula used to share taxes among all counties is fair and approved by your Senator, who represents the county's interests.
Protection from County Corruption	The Senate's oversight role ensures that your county leaders (Governor, County Executives) are held accountable for how they spend the public funds allocated to the county.

III. Real-World Example

- **Scenario:** The National Assembly passes a revenue bill that drastically reduces the amount of money allocated to the counties.
- **Action based on Article 96(3):** The Senate rejects the bill outright. They argue that the Senate is the sole body constitutionally mandated to determine the **allocation of national revenue among counties**. They use their veto power on such legislation to ensure the counties receive an adequate and equitable share of the national budget.
- **Result:** This article guarantees a constitutional stalemate until both houses agree on the formula, ensuring the financial integrity and political stability of the devolution system.

Article 97: Membership of the National Assembly

97. (1) The National Assembly consists of—

(a) **two hundred and ninety** members, each elected by the registered voters of a single **constituency**;

(b) **forty-seven women**, each elected by the registered voters of the counties, each county constituting a **single constituency**;

(c) **twelve members** nominated by political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent **special interests** including the youth, persons with disabilities and workers; and

(d) the Speaker, who is an *ex officio* member.

(2) The members of the National Assembly specified in clause (1)(a) and (b) shall be elected in accordance with Article 89.

I. Simple Explanation

Article 97 details the composition of the **National Assembly**, establishing the specific number and type of representatives who sit in the lower House.

1. **Constituency MPs (Clause 1a):** There are **290 members** directly elected by voters in specific electoral areas called **constituencies**.
2. **County Women Representatives (Clause 1b):** There are **47 women members**, one elected from each of the **47 counties**. The entire county acts as a single constituency for this election.
3. **Nominated Members (Clause 1c):** There are **12 nominated members** selected via **party lists** (Article 90). These seats are reserved for specific **special interests** that might not gain representation through direct election, such as youth, persons with disabilities (PWDs), and workers.
4. **Speaker:** The **Speaker** is a member of the Assembly by virtue of their office (*ex officio*), bringing the total composition to over 349 members.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Local Representation	You are represented by a constituency MP who handles local matters and a County Woman Representative who focuses on broader county and gender issues.
Right to Special Interest Voice	If you belong to the youth, PWD, or worker categories, this article guarantees that your concerns have a voice in the national legislature via the nominated seats.
Direct Accountability	Your primary MP (Constituency MP) is directly accountable to you, the voter, and can be easily identified for local issues.

III. Real-World Example

- **Scenario:** When a new law concerning workers' rights is debated in the National Assembly, the nominated member representing the **workers' special interest** uses their position to lobby and introduce amendments favourable to trade unions.
- **Result:** This demonstrates the core function of the nominated seats (Clause 1c). While they cannot vote in national elections, their constitutional mandate is to ensure that the legislative process does not overlook the concerns of specific marginalized groups, bringing their unique perspectives into national law-making.

Article 98: Membership of the Senate

98. (1) The Senate consists of—

(a) **forty-seven members**, each elected by the registered voters of the **counties**, each county constituting a single constituency;

(b) **sixteen women members** nominated by political parties according to their proportion of members of the Senate in accordance with Article 90;

(c) **two members**, being one man and one woman, representing the **youth**, nominated by political parties in accordance with Article 90;

(d) **two members**, being one man and one woman, representing **persons with disabilities**, nominated by political parties in accordance with Article 90; and

(e) the Speaker, who is an *ex officio* member.

I. Simple Explanation

Article 98 details the composition of the **Senate**, establishing the number and type of representatives in the upper House, whose mandate is primarily to protect county interests.

1. **Elected Senators (Clause 1a):** There are **47 members**, one directly elected by the voters of each of the **47 counties**. This is the county's primary representative at the national level.
2. **Nominated Members:** The remaining seats are filled through party lists (Article 90):
 - **16 Women:** Nominated to help meet the **two-thirds gender rule** (Clause 1b).
 - **2 Youth:** One man and one woman representing the **youth** (Clause 1c).
 - **2 PWDs:** One man and one woman representing **persons with disabilities** (Clause 1d).
3. **Speaker:** The **Speaker** is an *ex officio* member, bringing the total composition to 68 members.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to County Representation	Your Senator is the constitutional guardian of your county's interests at the national level, specifically overseeing legislation and budgets that affect devolution.
Protection of Marginalized	This article ensures that the Senate, which controls county funding and law, is inclusive of youth and PWDs, guaranteeing their input on crucial devolved issues.
Clarity of Role	The composition ensures that every Senator's main duty is to the county they represent, making their role distinct from the National Assembly MP.

III. Real-World Example

- **Scenario:** During a Senate session, a bill is proposed that would impose a new tax on County Governments.
- **Action based on Article 98:** The 47 elected Senators, acting as representatives of the counties (Clause 1a), unanimously reject the bill, arguing that the tax will harm the financial viability of devolution.
- **Result:** The composition and mandate of the Senate ensures that legislative matters affecting county funds and powers receive aggressive scrutiny from county-focused representatives, providing a powerful layer of protection for devolution.

Article 99: Qualifications and Disqualifications for Membership of Parliament

99. (1) A person is qualified to be elected as a member of Parliament if the person—

(a) is registered as a **voter**;

(b) satisfies any **educational, moral and ethical requirements** prescribed by this Constitution or by an Act of Parliament; and

(c) is **nominated by a political party** or is an independent candidate.

(2) A person is disqualified from being elected as a member of Parliament if the person—

(a) is a **public officer** other than a member of Parliament or a member of a county assembly;

(b) is an undischarged **bankrupt**;

(c) is of **unsound mind**;

(d) is serving a sentence of **imprisonment of at least six months**; or

(e) has been found, in accordance with any law, to have **misused or abused a State office**.

I. Simple Explanation

Article 99 sets the mandatory minimum requirements for anyone seeking to be an MP or Senator, and lists specific disqualifications based on integrity, financial status, and criminal history.

1. **Qualifications (Clause 1):** To run for Parliament, you must be a **registered voter** and meet the **educational, moral, and ethical requirements** set by law. You must also be nominated by a political party or run as an independent.
2. **Disqualifications (Clause 2):** You are **banned** from running if you:
 - **Hold another public office** (e.g., you must resign as a Principal Secretary to run).
 - Are a certified **bankrupt** or of **unsound mind**.
 - Are currently serving a **six-month or longer jail sentence**.
 - Have been proven to have **misused or abused a State office** (a Chapter Six integrity violation).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Leadership Integrity	This is your direct defence against corruption. You can challenge the eligibility of candidates who have been dismissed for abusing State office, ensuring that only leaders who meet high integrity standards are allowed to represent you.
Protection from Conflict of Interest	The ban on public officers running (Clause 2a) ensures that candidates dedicate their full time to the campaign and that current office holders don't exploit public resources for their campaigns.
Right to Challenge	If you suspect a candidate has a disqualifying factor (e.g., unresolved bankruptcy or a long prison sentence), you have the legal right to petition the IEBC or the courts to remove them from the ballot.

III. Real-World Example

- **Scenario:** A candidate for Senator is found to have been dismissed from their previous job as a County Executive Officer (a State Officer) for a corruption scandal that constituted misuse of public office.
- **Action based on Article 99(2)(e):** A voter or rival candidate challenges the nomination before the IEBC and the courts. They argue that the candidate is permanently disqualified due to the finding of **misused or abused a State office**.
- **Result:** The courts have consistently used this clause to bar candidates whose ethical and integrity records violate the standards set in Chapter Six, emphasizing that the moral standing of leaders is a mandatory constitutional requirement.

Article 100: Promotion of Representation of Marginalised Groups

100. Parliament shall enact legislation to promote the representation in Parliament of—

- (a) **women;**
- (b) **the youth;**
- (c) **persons with disabilities;** and
- (d) **minority and marginalised communities.**

I. Simple Explanation

Article 100 is a constitutional directive to **Parliament** to take active, legislative steps to ensure that the four listed marginalized groups are adequately represented in the National Assembly and the Senate.

1. **Legislative Mandate:** Parliament is required to pass laws that go beyond the basic reserved seats (Article 97/98) to actively promote greater political representation for **women, youth, PWDs, and minority communities.**
2. **Affirmative Action:** This article is the foundation for creating systems and funding that remove barriers preventing these groups from achieving political office.

II. Citizen's Right & Personal Impact

- **Right to Demand Legislative Action:** If you belong to one of these groups, you can demand that Parliament passes the necessary laws (e.g., funding, legal frameworks) to fulfil this constitutional duty to promote your representation.
- **Protection of Inclusion:** This ensures that Parliament must continuously work towards making itself a mirror of Kenya's diverse society.

III. Real-World Example

- **Scenario:** Parliament has struggled to pass the "Two-Thirds Gender Rule" law (based on Article 81/27) to increase women's representation in the National Assembly beyond the reserved seats.
- **Action based on Article 100(a):** The Judiciary has cited Article 100 as one of the key mandates requiring Parliament to find a creative and compliant way to fulfil the constitutional obligation to promote the representation of **women.**
- **Result:** The failure to comply has led the courts to issue orders directing Parliament to enact the necessary legislation, affirming that this article is a binding constitutional mandate for achieving political inclusion.

Article 101: Election of Members of Parliament

101. (1) A general election of members of Parliament shall be held on the **second Tuesday in August** in every **fifth year**.

(2) A by-election shall be held—

(a) to fill a vacancy in the National Assembly or in the Senate, in a constituency or ward, within **ninety days** after the vacancy occurs; or

(b) in the case of a political party nomination, within **twenty-one days** after the vacancy occurs.

I. Simple Explanation

Article 101 fixes the date and frequency of all elections for Parliament (National Assembly and Senate) and sets the strict timelines for filling vacancies.

1. **General Election Date (Clause 1):** The national General Election is a fixed date, constitutionally set to be held every **second Tuesday in August** of every **fifth year**. This removes the President's power to call an election at will.
2. **By-Election Timelines (Clause 2):** If a seat becomes vacant (due to death, resignation, or removal), the resulting **by-election** must be held quickly:
 - For an elected seat (Constituency/County/Ward): within **90 days** of the vacancy.
 - For a nominated seat (Party List): within **21 days** (as the party list process is simpler).

II. Citizen's Right & Personal Impact

- **Right to Predictable Governance:** You are guaranteed that elections will be held on a known date every five years, providing political stability and certainty.
- **Right to Continuous Representation:** The strict 90-day limit for by-elections ensures that your constituency or county is not left without an elected representative for long periods.

III. Real-World Example

- **Scenario:** An MP dies in office in January 2024.
- **Action based on Article 101(2)(a):** The Speaker declares the seat vacant, and the IEBC is constitutionally required to hold a by-election to fill the constituency seat **within 90 days** (i.e., by early April 2024).
- **Result:** This article has been crucial in legal battles, where courts strictly enforce the 90-day deadline against the IEBC, ensuring that the constitutional requirement for timely representation is met, regardless of administrative challenges.

Article 102: Term of Parliament

102. (1) The term of each House of Parliament is **five years** beginning from the date of the first sitting of the House after a general election.

(2) A House of Parliament may extend its term beyond five years by not more than **twelve months** only for the purpose of ensuring that a general election is held **within six months after the end of a state of war**.

I. Simple Explanation

Article 102 defines the constitutional duration of a parliamentary term and the only circumstance under which that term can be extended.

1. **Standard Term (Clause 1):** The National Assembly and Senate serve a fixed term of **five years**, counted from the first day they convene after a General Election.
2. **War Exception (Clause 2):** The term can **only** be extended if the country is at **war**, and the extension can be for a maximum of **twelve months**. This is to allow an election to be organized safely within six months after the war ends.

II. Citizen's Right & Personal Impact

- **Right to Fixed Term:** This guarantees that the government cannot arbitrarily extend its stay in power. The five-year term is a hard limit designed to maintain democratic accountability.
- **Protection of Democracy during Crisis:** The narrow exception for war ensures that elections are only deferred under the most extreme circumstances and for the minimum time necessary.

III. Real-World Example

- **Scenario:** The President declares a prolonged state of emergency due to severe political instability and suggests delaying the next General Election by two years.
- **Action based on Article 102:** Any attempt to extend the term beyond five years for any reason other than a declared **state of war** is unconstitutional. A civil society group or the opposition files a petition in the Supreme Court.
- **Result:** The court would strike down the extension, ruling that a state of emergency or civil unrest is **not equivalent to a state of war**, and therefore, the constitutional five-year term (Clause 1) must be strictly adhered to.

Article 103: Vacancy in the Office of Member of Parliament

103. (1) The office of a member of Parliament becomes vacant—

- (a) if the member **dies**;
- (b) if the member **resigns** in writing to the Speaker;

- (c) if the member is absent from eight sittings of the relevant House **without permission**;
- (d) if the member is found, in accordance with any law, to have **contravened Chapter Six** (Leadership and Integrity);
- (e) if the member is declared **bankrupt**;
- (f) if the member is of **unsound mind**;
- (g) if the member is **sentenced to a term of imprisonment of at least six months**; or
- (h) if the member **ceases to be a member of the political party** which nominated the member.

I. Simple Explanation

Article 103 lists the comprehensive circumstances under which an MP or Senator loses their seat. This ensures accountability for integrity breaches, financial hardship, and party loyalty.

1. **Integrity and Conduct (Clauses d, g):** A seat is lost if the member **contravened Chapter Six** (e.g., corruption, abuse of office) or is sentenced to **six months or more of imprisonment**.
2. **Party Loyalty (Clause h):** This is a key provision: if an elected member **ceases to be a member of the political party** that nominated them (e.g., by resigning or being expelled), they automatically lose their seat.
3. **Financial and Health Status (Clauses e, f):** A seat is lost if the member is declared an undischarged **bankrupt** or is of **unsound mind**.
4. **Attendance (Clause c):** A seat is lost if the member is absent from **eight sittings** of the House without valid permission.

II. Citizen's Right & Personal Impact

- **Right to Integrity:** This ensures that leaders who violate integrity standards or who are sentenced for serious crimes are automatically removed from office.
- **Right to Active Representation:** The attendance rule is the basis for demanding that your representative actively participates in legislative work and debates.
- **Party Discipline:** If you vote for a party, this article ensures that the elected member remains loyal to the party platform they were elected on, preventing party hopping.

III. Real-World Example

- **Scenario:** An MP, elected on Party A's ticket, publicly switches allegiance to Party B and starts campaigning for Party B without resigning their seat.
- **Action based on Article 103(1)(h):** Party A initiates proceedings to remove the MP from its membership list. Once removed, the Speaker of the relevant House must declare the seat **vacant** because the member **ceased to be a member of the political party which nominated them**.
- **Result:** This clause is the constitutional basis for enforcing **party loyalty** and discouraging the instability caused by political defection between general elections. Once the seat is declared vacant, a by-election (Article 101) is called.

Article 104: Right of Recall

104. (1) A person who is an **elector** for a constituency or a county may petition the Independent Electoral and Boundaries Commission to **recall** the member of Parliament representing the constituency or county, as the case may be.

(2) Parliament shall enact legislation to give effect to the right of recall.

I. Simple Explanation

Article 104 introduces the powerful democratic tool of the **right of recall**, allowing voters to remove their elected representative before the end of their five-year term.

1. **Who Can Recall (Clause 1):** Any registered **elector** (voter) in a specific constituency or county can file a petition with the IEBC to start the process of removing their MP or Senator.
2. **Implementation (Clause 2):** Parliament is mandated to pass a law (**Recall of Members of Parliament Act**) detailing the grounds, threshold (e.g., number of signatures needed), and specific procedure for conducting a successful recall vote.

II. Citizen's Right & Personal Impact

- **Right to Continuous Accountability:** This is your democratic nuclear option. If your representative is corrupt, lazy, or consistently acts against the public interest, you do not have to wait five years to remove them.
- **Empowerment of Voters:** This shifts power back to the voters, acting as a constant check on the representative's performance and integrity throughout their term.

III. Real-World Example

- **Scenario:** A Senator is publicly accused of corruption and consistently misses key legislative sittings without explanation. Voters in their county feel they are no longer being represented.
- **Action based on Article 104:** A group of registered voters in that county gather the required number of signatures (as set by the **Recall Act**) and file a petition with the IEBC.
- **Result:** If the legal thresholds are met, the IEBC would organize a **recall election**. If the majority of voters vote to recall the Senator, the seat is declared vacant, demonstrating the direct power of popular sovereignty over elected officials.

Article 105: Determination of Questions of Membership

105. (1) A question as to whether a person has been **validly elected** as a member of Parliament, or **validly nominated** as a member of Parliament under Article 97(1)(c) or 98(1)(b), (c) and (d), shall be **heard and determined by the High Court**.

(2) A question as to whether a member of Parliament has **vacated office** shall be heard and determined by the **High Court**.

(3) An appeal from a decision of the High Court under this Article lies to the **Court of Appeal** and the **Supreme Court**.

I. Simple Explanation

Article 105 establishes the specific court jurisdiction for settling disputes about the **membership of Parliament**, ensuring that the legitimacy of representatives is decided through an independent judicial process.

1. **Jurisdiction (Clause 1 & 2):** The **High Court** is given the **exclusive primary power** to resolve two major types of disputes:
 - **Electoral Disputes:** Whether an elected or nominated member was **validly** elected or nominated in the first place (e.g., whether the election process was free and fair, or whether the candidate was qualified).
 - **Vacancy Disputes:** Whether an existing member has **vacated their office** (e.g., due to party defection, bankruptcy, or a Chapter Six integrity violation, as listed in Article 103).
2. **Appeals (Clause 3):** The decision of the High Court on these matters can be challenged all the way up to the **Court of Appeal** and the **Supreme Court**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Fair Representation	This article guarantees that if you believe the election in your constituency was rigged, or if your representative is legally unqualified, you have a direct path to challenge the result through the independent judiciary.
Judicial Oversight	It ensures that Parliament itself cannot decide the validity of its own members, preventing conflicts of interest and maintaining judicial neutrality in the determination of a member's legitimacy.
Access to Justice	By specifying the High Court, it ensures that electoral disputes are handled efficiently and quickly, as the High Court is mandated to prioritize these petitions.

III. Real-World Example

- **Scenario:** A candidate loses the election for a County Woman Representative seat and alleges that the winner used forged academic papers (violating Article 99) or engaged in massive voter bribery.
- **Action based on Article 105(1):** The losing candidate files an **Election Petition** in the **High Court**, challenging the **validity** of the winner's election.
- **Result:** If the High Court finds the irregularities are substantial enough, it may nullify the election and order a fresh poll. If either party disagrees, they can appeal the matter to the Court of Appeal and eventually the Supreme Court, all based on the judicial path set out in Article 105.

Article 106: Speakers and Deputy Speakers of Parliament

106. (1) There shall be a **Speaker** for each House of Parliament, who shall be **elected by that House** in accordance with the Standing Orders, from among persons who are **qualified to be elected** as members of Parliament but are **not such members**.¹

(2) There shall be a **Deputy Speaker** for each House of Parliament, who shall be **elected by that House** in accordance with the Standing Orders, from among the **members of that House**.

(3) The office of the Speaker or Deputy Speaker shall become vacant—

(a) on the expiry of the term of that House;

(b) if the office holder resigns;

(c) if the House resolves to **remove** the office holder by a resolution supported by at least **two-thirds of its members**; or

(d) in the case of the Deputy Speaker, if the person **ceases to be a member** of the relevant House.

I. Simple Explanation

Article 106 defines the leadership structure of both the National Assembly and the Senate, outlining who can be Speaker and Deputy Speaker, how they are chosen, and how they can be removed.

1. **Speaker (Clause 1):** The Speaker of each House (National Assembly and Senate) must be elected by the members, but crucially, they must be a person **from outside of Parliament**—a non-member who **qualifies** to be an MP/Senator.
2. **Deputy Speaker (Clause 2):** The Deputy Speaker of each House is also elected by the members, but they must be a current **elected or nominated member** of that particular House.
3. **Removal (Clause 3c):** Both the Speaker and Deputy Speaker can be removed by a high constitutional threshold: a resolution supported by **at least two-thirds (66.7%) of the members** of the relevant House.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Independent Leadership	The requirement for the Speaker to be an outsider helps ensure the presiding officer is neutral and independent, preventing political partisanship from overly influencing the running of Parliament.
High Bar for Removal	The two-thirds threshold for removal provides stability to the leadership, ensuring that the Speaker cannot be easily removed by a simple majority vote driven by political whims.
Orderly Debate	The Speaker is the custodian of the House rules and procedures. This article guarantees that the person overseeing legislative debate is legitimate and holds the confidence of the members.

III. Real-World Example

- **Scenario:** The Speaker of the National Assembly is accused of bias by the minority party, and the majority party introduces a motion to remove them.
- **Action based on Article 106(3)(c):** The motion must be debated and then put to a vote. To succeed, the motion must garner the support of **two-thirds** of *all* members of the National Assembly.
- **Result:** If the majority party only controls 55% of the seats, they will fail to reach the two-thirds threshold, and the Speaker will retain their office. This illustrates how the Constitution protects the neutrality and tenure of the presiding officers.

Article 107: Presiding at Sitzings of Parliament

107. (1) The **Speaker** of the relevant House shall preside at any sitting of the House.

(2) If the Speaker is absent, the **Deputy Speaker** shall preside.

(3) If the Speaker and the Deputy Speaker are both absent, or if the Deputy Speaker has succeeded to the office of Speaker, the **members of the relevant House** shall elect one of their number to preside.

I. Simple Explanation

Article 107 provides the simple chain of command for who is legally authorized to preside over the proceedings and debates of the National Assembly and the Senate.

1. **Primary Presider (Clause 1):** The **Speaker** is the constitutional chair of the House.
2. **First Backup (Clause 2):** If the Speaker is unavailable, the **Deputy Speaker** takes the chair.
3. **Second Backup (Clause 3):** If both the Speaker and Deputy Speaker are absent, the **members** must quickly choose one of their colleagues to preside over that specific sitting.

II. Citizen's Right & Personal Impact

- **Right to Orderly Process:** This ensures that parliamentary proceedings never grind to a halt due to the absence of the leaders, guaranteeing the continuous functioning of the legislative branch.
- **Legal Validity of Acts:** Any bill passed must be presided over by a legitimately appointed person under this article, providing legal validity and constitutional protection to the resulting laws.

III. Real-World Example

- **Scenario:** The Speaker is traveling abroad and the Deputy Speaker is taken ill on the morning of a crucial debate.
- **Action based on Article 107(3):** When the House convenes, the clerk asks the members to elect one of their peers (e.g., a member of the Speaker's Panel) to preside for the day.
- **Result:** The member elected presides over the sitting, and all business conducted, including debates and votes, is constitutionally valid because the House followed the prescribed procedure for temporary leadership.

Article 108: Party Leaders

108. (1) There shall be a **Leader of the Majority Party** and a **Leader of the Minority Party** in each House of Parliament.

(2) The leader of the majority party shall be the person who is the leader in the relevant House of the largest party or coalition of parties in that House.

(3) The leader of the minority party shall be the person who is the leader in the relevant House of the second largest party or coalition of parties in that House.

I. Simple Explanation

Article 108 formally recognizes the positions of **Majority and Minority leaders** in both the National Assembly and the Senate, which are key roles for managing legislative business.

1. **Mandatory Offices (Clause 1):** The Constitution requires these two leadership positions to exist in both Houses.
2. **Majority Leader (Clause 2):** This person leads the party (or coalition) that commands the **largest number of seats** in that House. They control the government's legislative agenda.
3. **Minority Leader (Clause 3):** This person leads the party (or coalition) that commands the **second largest number of seats**. They lead the opposition's legislative agenda and oversight efforts.

II. Citizen's Right & Personal Impact

- **Right to Clear Opposition:** This article guarantees that there is a **constitutionally recognized and funded opposition** whose duty is to scrutinize government action, ensuring that checks and balances are maintained.
- **Orderly Debate:** The two leaders act as the engine for all business in the House, ensuring that debates are organized, time is allocated fairly, and legislative priorities are set efficiently.

III. Real-World Example

- **Scenario:** After a General Election, a coalition of parties (Party X) wins 51% of the seats in the National Assembly, and another coalition (Party Y) wins 45% of the seats.
- **Action based on Article 108:** Party X is designated the **Majority Party**, and its chosen leader becomes the **Leader of the Majority Party**. Party Y is designated the **Minority Party**, and its chosen leader becomes the **Leader of the Minority Party**.
- **Result:** The two leaders become the primary political actors in the House, meeting with the Speaker to set the legislative calendar, demonstrating the structure provided by this article.

Article 109: Exercise of Legislative Power

109. (1) Legislative power is exercised through **Bills passed by Parliament and assented to by the President**.

(2) Any Bill may originate in the **National Assembly**.

(3) Any Bill may originate in the **Senate**, concerning a matter for which the Senate is responsible under this Constitution.

(4) A Bill **not concerning county government** is considered only by the **National Assembly**.

(5) A Bill **concerning county governments** may originate in the National Assembly or the Senate.

I. Simple Explanation

Article 109 explains how laws are made in Kenya, defining the three steps required for a Bill to become an Act and specifying which House can initiate different types of Bills.

1. **The Law-Making Path (Clause 1):** For a law to be created, it must follow three steps:
 - **Passage:** It must be approved as a **Bill** by Parliament (one or both Houses).
 - **Assent:** The Bill must be signed (**assented to**) by the **President**.
2. **Bill Origin and Classification (Clauses 2-5):**
 - **National Bills (Clause 4):** Bills that **do not concern county governments** (like defence or foreign policy) are considered *only* by the **National Assembly**. They can originate there.

- **County Bills (Clause 5):** Bills that **concern county governments** (like devolution of health services) can originate in **either the National Assembly or the Senate**. The Senate's role is mandatory for these.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Defined Legal Process	This article ensures that the government cannot create laws arbitrarily. All laws that affect you must pass through the rigorous parliamentary and presidential assent process.
Protection of Devolution	The classification of Bills ensures that any law affecting your county (e.g., local taxes or services) must be debated and approved by the Senate , the body mandated to protect county interests.

III. Real-World Example

- **Scenario 1 (National Bill):** Parliament drafts a Bill to revise the income tax rate.
- **Action based on Article 109(4):** This Bill **does not concern counties**; therefore, it is introduced and debated **only in the National Assembly** before being sent to the President for assent.
- **Scenario 2 (County Bill):** Parliament drafts a Bill to establish a new regulatory body for county-level infrastructure projects.
- **Action based on Article 109(5):** This Bill **concerns county governments** and must, therefore, be debated and approved by **both the National Assembly and the Senate** before being sent to the President.

Here is the breakdown for **Article 110: Definition of a Money Bill and a Bill concerning county government**, which clarifies the crucial categories of legislation and determines which House of Parliament has jurisdiction over them.

Article 110: Definition of a Money Bill and a Bill concerning county government

110. (1) In this Constitution, "**Bill concerning county government**" means a Bill affecting the functions and powers of the county governments set out in the Fourth Schedule, the election of members of a county assembly or executive, or the county financial matters.

(2) A Bill, other than a Bill to amend this Constitution, is a "**Money Bill**" if it contains provisions dealing with—

(a) **taxes;**

(b) national **loans** or public **debt**; or

(c) charges on the **Consolidated Fund** or county revenue fund.

(3) Before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly **resolve any question as to whether it is a Bill concerning county government, and if so, whether it is a special or ordinary Bill, or a Money Bill.**

(4) If the Speakers fail to agree, the matter shall be jointly referred to the **Supreme Court** for a determination.

I. Simple Explanation

Article 110 is the constitutional rulebook for classifying Bills. Correct classification is essential because it determines which House (National Assembly or Senate) can introduce the Bill and which House has the final say.

1. **County Bill Definition (Clause 1):** A Bill is a **County Bill** if it affects the local functions (like health, agriculture) or powers of County Governments (listed in the Fourth Schedule), or deals with county elections or finance.
2. **Money Bill Definition (Clause 2):** A **Money Bill** deals strictly with national or county finances, such as imposing new **taxes**, raising **loans/debt**, or authorizing payments from government accounts (**Consolidated Fund**).
3. **Joint Speaker Determination (Clause 3):** Before any Bill is debated, the **Speakers of the National Assembly and the Senate** must jointly agree on its classification. This prevents either House from unilaterally claiming jurisdiction.
4. **Supreme Court Final Say (Clause 4):** If the two Speakers cannot agree on the classification, the decision is referred to the **Supreme Court**, which acts as the final legal arbiter.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Proper Scrutiny	This ensures that laws affecting your county and devolution are properly scrutinized by the Senate (the county's defender), and laws affecting national funds are properly scrutinized by the National Assembly (the holder of the 'Power of the Purse').
Protection of Devolution	The clear definition of a County Bill prevents the National Assembly from bypassing the Senate when legislating on devolved functions, protecting the principle of regional self-governance.
Clarity and Legal Certainty	The process ensures that all laws passed have a clear, constitutionally verified origin, preventing legal challenges based on improper procedure later on.

III. Real-World Example

- **Scenario:** The National Assembly introduces a Bill proposing new regulations for the licensing of small-scale markets (a devolved function listed in the Fourth Schedule). The National Assembly Speaker classifies it as a National Bill, but the Senate Speaker argues it is a County Bill.
- **Action based on Article 110(3) and (4):** Since the Speakers disagree, the matter is immediately referred to the **Supreme Court**.
- **Result:** The Supreme Court would determine the Bill's classification. If it rules it is a **Bill concerning county government** (Clause 1), the Bill must be processed by **both Houses** (Article 109). This ensures that disputes over legislative turf are resolved quickly and definitively by the Judiciary, preventing constitutional crises.

Article 111: Special Bills Concerning County Governments

111. (1) A Bill concerning county government is a **special Bill** if it relates to the **election of members of a county assembly or a county executive organ** or the **revenues of the county revenue funds**.

(2) A special Bill shall not be passed by the Senate unless it is supported by **two-thirds of the members** of the Senate.

(3) An ordinary Bill concerning county government shall be passed by the Senate if supported by a majority of the members of the Senate.

I. Simple Explanation

Article 111 creates a special, highly protected category of County Bills called **Special Bills**, which require a higher threshold of approval in the Senate to pass.

- 1. Definition of Special Bill (Clause 1):** A County Bill is considered **special** if it deals with matters critical to devolution, specifically: **county elections** (who gets elected and how) or the **revenues of the county funds** (money).
- 2. High Threshold (Clause 2):** Because these Special Bills have such a significant impact on devolution, the Senate cannot pass them with a simple majority. They require approval by a **two-thirds majority** of all Senators.
- 3. Ordinary Bills (Clause 3):** All other County Bills (Ordinary Bills, e.g., on health or agriculture policy) only require a simple majority vote in the Senate to pass.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection of County Finance	This is a powerful shield against the National Government arbitrarily changing how counties raise or control their money. The two-thirds threshold is difficult to meet and ensures broad consensus is needed to change county finance laws.
Right to Democratic Process	Any change to the way county officials are elected must be done with broad political support (two-thirds Senate vote), ensuring that local democracy is protected from easy manipulation.

III. Real-World Example

- **Scenario:** A Bill is introduced to Parliament to change the rules governing County Assembly elections.
- **Action based on Article 111(1):** The Speakers classify this as a **Special Bill** because it relates to the **election of members of a county assembly**.
- **Result:** When the Bill reaches the Senate, it must be approved by **two-thirds of the Senators**. If 40 out of 67 Senators vote for it (more than a simple majority but less than two-thirds), the Bill **fails** because it did not meet the constitutional threshold for a Special Bill concerning county government.

Article 112: Referral of Bills to the Senate

112. (1) The Senate may **not amend a Bill** if the result of the amendment would be that the Bill ceases to be a Bill concerning county government.
- (2) The Senate may **amend a Bill** concerning county government to the extent that it affects the functions and powers of the county governments under the **Fourth Schedule**.
- (3) The Senate may not deal with the parts of a Bill that **do not concern county government** and must refer those parts to the National Assembly.

I. Simple Explanation

Article 112 defines the **Senate's power to amend** a Bill, ensuring that the Senate sticks to its core constitutional mandate of dealing only with issues affecting devolution.

1. **Senate's Focus (Clause 2):** The Senate can only amend a County Bill to the extent that the amendment relates to the **functions and powers of the county governments** (as listed in the Fourth Schedule).
2. **No Change of Classification (Clause 1):** The Senate cannot make an amendment that would fundamentally change the Bill so that it is no longer considered a County Bill. This prevents the Senate from legislating on purely national matters.
3. **Referral (Clause 3):** If a single Bill contains both national and county matters, the Senate must **separate and refer the purely national parts** (that do not concern counties) back to the National Assembly.

II. Citizen’s Right & Personal Impact

Citizen's Right	Personal Impact
Clarity of Legislative Role	This article ensures that the Senate (and therefore the county voice) is focused and effective, preventing it from wasting time or encroaching on the jurisdiction of the National Assembly.
Protection of Legal Validity	If the Senate oversteps its amending power, the resulting law would be unconstitutional, thus providing a check on the legislative power of the upper House.

III. Real-World Example

- **Scenario:** The National Assembly sends the Senate a Bill that creates national regulations for livestock movement (a national matter) but also establishes county government responsibility for local abattoirs (a county matter).
- **Action based on Article 112(3):** The Senate will debate and amend the section on abattoirs, but it **cannot** amend the section on national livestock movement regulations. It must refer the unamended national section back to the National Assembly.
- **Result:** This ensures legislative efficiency and constitutional compliance, guaranteeing the specialized nature of the Senate's role in the legislative process.

Article 113: Procedure in Respect of Money Bills

113. (1) A Money Bill (Article 110) may originate only in the **National Assembly**.

(2) The National Assembly may **not delegate its power to consider Money Bills** to any committee.

I. Simple Explanation

Article 113 grants the **National Assembly** (the house that represents the people in constituencies) **exclusive power** over all matters dealing with national finance (**Money Bills**).

1. **Exclusive Origin (Clause 1):** A Bill dealing with taxes, national loans, or the budget can **only** be introduced (**originate**) in the **National Assembly**. The Senate cannot introduce Money Bills.
2. **No Delegation (Clause 2):** The National Assembly's power to consider Money Bills is so important that it **cannot delegate** the final decision to a smaller committee. The full House must consider the Bill.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Fiscal Accountability	Since your taxes and the national debt affect all citizens, this power is deliberately vested in the National Assembly (the directly elected house with the largest membership), ensuring maximum scrutiny.
Protection from Undue Influence	The ban on delegation (Clause 2) ensures that critical financial decisions are made in the open, on the floor of the House, and not behind closed doors by a small committee.

III. Real-World Example

- **Scenario:** A Senator proposes a Bill in the Senate to introduce a new national sales tax to boost revenue for counties.
- **Action based on Article 113(1):** The Speaker of the Senate would rule the Bill **inadmissible** because it is a **Money Bill** (deals with taxes) and can **only originate in the National Assembly**.
- **Result:** The Senator would have to convince an MP in the National Assembly to introduce the Bill on their behalf. This strict rule protects the **National Assembly's primary control** over the national budget and taxes.

Article 114: Procedure after assent

114. (1) If the President **assents** to a Bill, the Bill shall immediately be published as an **Act of Parliament**.

(2) The Act shall come into force **fourteen days** after its publication, unless the Act stipulates otherwise.

I. Simple Explanation

Article 114 defines the final step in the law-making process—what happens after a Bill is approved and signed by the President.

1. **Becoming Law (Clause 1):** Once the President signs (**assents to**) a Bill, it ceases to be a Bill and immediately becomes an **Act of Parliament** and must be published in the Gazette.
2. **Effective Date (Clause 2):** To ensure public awareness, the new Act does not take effect immediately; it comes into force **14 days** after its publication. The only exception is if the Act itself specifies a different date (e.g., retroactively, or at a later date).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Notice	The 14-day delay is a critical protection. It ensures that citizens, businesses, and government agencies have at least two weeks' notice to prepare and adjust to a new law before it becomes legally enforceable against them.
Clarity of Enforcement	The date of publication is the clear, legal benchmark for when a law is officially recognized as having been enacted.

III. Real-World Example

- **Scenario:** The President assents to the new *Traffic Amendment Bill* on March 1st, and it is published in the Kenya Gazette on March 5th.
- **Action based on Article 114(2):** The new traffic rules **cannot** be enforced until **14 days** after publication. The Act would legally come into force on March 19th.
- **Result:** A traffic police officer cannot legally charge a citizen for violating the new rules on March 10th because the law is not yet in effect, reinforcing the citizen's right to adequate notice.

Veto Article 115: Presidential assent and referral

115. (1) Within **fourteen days** after a Bill is presented for assent, the President shall—

(a) **assent to the Bill**; or

(b) refer the Bill back to Parliament with a **memorandum** indicating the reservations.

(2) If the President refers a Bill back, Parliament may—

(a) **amend the Bill** fully accommodating the President's reservations; or

(b) **pass the Bill again** in the form received from the President, by a resolution supported by **two-thirds of the members** of each House.

(3) If Parliament passes the Bill again under clause (2)(b), the Speaker shall again present it to the President for assent.

(4) If the President **refuses to assent** to a Bill referred under clause (3), the Bill shall be **taken to have been assented to** on the expiry of the 14-day period.

I. Simple Explanation

Article 115 defines the process by which the **President can veto** (reject) a Bill, and how Parliament can ultimately **override** that veto.

1. **Presidential Options (Clause 1):** The President has **14 days** to either sign the Bill (**assent**) or send it back to Parliament with a **memorandum** explaining their objections (**veto**).
2. **Parliamentary Options (Clause 2):** If vetoed, Parliament has two choices:
 - **Accept:** Amend the Bill to satisfy the President's concerns.
 - **Override:** Pass the original Bill again without changes, but this requires a massive majority: **two-thirds of the members of each House**.
3. **Automatic Assent (Clause 4):** If Parliament overrides the veto (Clause 2b) and sends the Bill back, and the President then refuses to sign it a second time, the Constitution states that the Bill is **deemed to have been assented to** (it becomes law automatically).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection from Poor Legislation	The President's veto power acts as a check, ensuring that poorly drafted or unconstitutional Bills are sent back for revision before they become law.
Supremacy of Parliament	The override mechanism ensures that Parliament, as the people's ultimate representative, has the final say. If two-thirds of the legislature agrees, the President cannot block the will of the people.

III. Real-World Example

- **Scenario:** The President vetoes a controversial security Bill, arguing in a memorandum that one clause violates the right to privacy (Article 31).
- **Action based on Article 115(2):** Parliament, determined to pass the Bill, decides to **override** the veto. The National Assembly and the Senate must both hold separate votes, and the Bill will only become law if **two-thirds of the total membership** of the National Assembly *and* **two-thirds of the total membership** of the Senate vote for it.
- **Result:** This high threshold ensures that the President's veto is respected unless there is overwhelming, near-unanimous political will in the legislature to proceed against the President's wishes.

Article 116: Act of Parliament establishing principles of the electoral system

116. (1) A Bill to amend the Constitution shall not be assented to by the President.

(2) A Bill to amend a provision of this Constitution that affects the functions of the County Governments or the boundaries of the counties shall be referred to the Senate.

Note: The text for Article 116 in the Constitution is actually related to the **coming into force of Acts of Parliament** (similar to 114) and the heading you provided seems more relevant to **Article 255** (Amendment of the Constitution) or **Article 82** (Electoral Legislation).

For accuracy in your book, I will use the actual content of Article 116 from the official Constitution text:

Article 116: Coming into Force of Acts of Parliament

116. (1) Subject to clause (2), an Act of Parliament comes into force on the fourteenth day after its publication in the Gazette, unless the Act stipulates a different date.

(2) An Act of Parliament that confers a financial benefit on members of Parliament shall come into force only after the next general election.

I. Simple Explanation

Article 116 is a critical financial integrity clause that prevents Parliament from immediately raising its own pay or benefits.

- 1. **General Rule (Clause 1):** This clause reiterates the **14-day notice period** for new laws (as seen in Article 114).
- 2. **Anti-Self-Enrichment Rule (Clause 2):** This is the key safeguard. Any Act of Parliament that grants a **financial benefit** (e.g., a pay raise, a new allowance, or a new pension scheme) to sitting **members of Parliament** cannot take effect immediately. It can only come into force **after the next general election**.

II. Citizen’s Right & Personal Impact

Citizen's Right	Personal Impact
Protection from Self-Enrichment	This article ensures that MPs cannot legislate massive pay raises for themselves and immediately benefit. They must pass the law, but then rely on the voters to return them to office to enjoy the benefit, thereby placing an electoral check on their financial decisions.
Financial Accountability	This prevents the legislature from using its power to make laws that serve the personal financial interests of the current political class.

III. Real-World Example

- **Scenario:** Parliament passes a Bill creating a generous, non-taxable housing allowance for all MPs.

- **Action based on Article 116(2):** Although the President assents to the Bill, the Speakers of both Houses must declare that the Act will **not come into force** until the date the next Parliament is sworn in (after the next General Election).
- **Result:** If an MP who voted for the raise is not re-elected in the next General Election, they will never receive the benefit. This rule forces MPs to consider the political cost of raising their own compensation.

Article 117: Powers, privileges and immunities

117. (1) Parliament shall enact legislation to determine the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, and the members.

(2) There shall be freedom of speech and debate in Parliament.

I. Simple Explanation

Article 117 guarantees the core privileges necessary for Parliament to function effectively and independently, primarily the right of members to speak freely without fear of legal action.

1. **Freedom of Speech (Clause 2):** Members of Parliament are guaranteed **freedom of speech and debate** within the House. This means a Member cannot be sued for defamation or arrested for statements made on the floor of Parliament.
2. **Legislative Mandate (Clause 1):** Parliament must pass a law (the *Parliamentary Powers and Privileges Act*) to detail the full scope of powers, **privileges**, and **immunities** for the Houses, their committees, and their leaders.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Unfiltered Debate	This ensures that your representatives can fearlessly expose corruption, criticize government policy, and question powerful individuals without facing civil or criminal penalties outside the House.
Protection of Oversight	The privileges ensure that parliamentary committees can summon and question any person or institution effectively without legal intimidation.

III. Real-World Example

- **Scenario:** During a public hearing in a parliamentary committee, an MP accuses a Cabinet Secretary of gross misconduct.
- **Action based on Article 117(2):** The Cabinet Secretary attempts to sue the MP for defamation.
- **Result:** The court would dismiss the lawsuit because the statement was made in the course of parliamentary proceedings and is protected by the constitutional guarantee of **freedom of speech and debate in Parliament**.

Article 118: Public access and participation

118. (1) Parliament shall **conduct its business in an open manner**, and its sittings and those of its committees shall be **open to the public**.

(2) Parliament shall facilitate **public participation and involvement** in the legislative and other business of Parliament and its committees.

I. Simple Explanation

Article 118 guarantees the principles of **transparency** and **public participation** in the work of Parliament, ensuring that law-making is not done in secret.

1. **Openness (Clause 1):** All parliamentary business and the sittings of all its committees must be conducted **in an open manner** and be **open to the public** (e.g., televised, public galleries, publicized).
2. **Mandate for Participation (Clause 2):** Parliament is constitutionally required to actively seek and facilitate **public participation and involvement** (e.g., through public hearings, calls for memoranda, and consultations) in every Bill and other key business.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Know	You have the right to attend parliamentary sessions, or watch them on media, and to know exactly what your representatives are debating and voting on.
Right to Input	If Parliament is debating a law that affects your business, health, or community, you have the right to demand that Parliament holds public hearings to enable your participation before the law is passed.

III. Real-World Example

- **Scenario:** A powerful committee holds a hearing on a controversial Bill in a closed-door session, preventing public attendance and media coverage.
- **Action based on Article 118(1):** A media organization or civil society group challenges the secrecy in court.
- **Result:** The court would immediately order the committee to hold its hearings in public, citing the constitutional requirement that Parliament shall **conduct its business in an open manner**. The right to **public access** is not a favour; it is a constitutional guarantee.

Article 119: Right to Petition Parliament

119. (1) Every person has a right to petition Parliament to **consider any matter** within its authority, including to **enact, amend or repeal** any legislation.

(2) Parliament shall establish a **procedure** for the orderly submission and consideration of petitions under clause (1).

I. Simple Explanation

Article 119 grants every person the direct constitutional right to formally communicate their grievances or demands to Parliament.

1. **Universal Right (Clause 1):** Any person can formally **petition Parliament** to deal with any matter that falls under its authority. This includes asking Parliament to create a **new law**, change an **existing law**, or **abolish a law**.
2. **Procedure Required (Clause 2):** Parliament must create and publish a clear **procedure** (the rules for submission and consideration) so that petitions are handled seriously and orderly, not simply ignored.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Direct Communication	This is your personal constitutional channel to demand legislative action. If you identify a gap in the law, you can formalize your request and compel Parliament to consider it.
Public Empowerment	This article ensures that individual or collective voices can directly influence the legislative agenda without needing to go through a political party or an MP.

III. Real-World Example

- **Scenario:** A community group is concerned that existing laws are insufficient to deal with plastic waste.
- **Action based on Article 119(1):** They draft a **petition** asking Parliament to enact a stringent new law banning single-use plastics. They submit the petition following the procedure established under Clause (2).
- **Result:** Parliament's relevant committee is constitutionally obliged to receive, consider, and report back on the petition, demonstrating that the citizen's voice has a formalized, legal path into the legislature.

Article 120: Official languages of Parliament

120. (1) The official languages of Parliament are **Kiswahili** and **English**.

(2) Either official language may be used for the purposes of—

(a) the debates and other proceedings of Parliament; and

(b) the records of Parliament.

I. Simple Explanation

Article 120 dictates the languages that must be used for all official business within both the National Assembly and the Senate.

1. **Official Languages:** Kiswahili and English are the only two languages authorized for use in Parliament.
2. **Use:** Members can use **either** language during debates and proceedings, and all official records (Hansards, committee reports, Bills) must be kept and published in both languages (linking to Article 7).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Understand Proceedings	Since both are official languages, you are guaranteed that all laws and legislative records are available in at least one language you are likely to understand, ensuring transparency.
Cultural Recognition	This elevates Kiswahili, the national language, to an equal status with English within the highest legislative body.

III. Real-World Example

- **Scenario:** A Member of Parliament, addressing a committee, insists on debating a Bill entirely in an indigenous language that few other members understand.
- **Action based on Article 120(1):** The Speaker or the committee chairperson would rule the Member **out of order** and compel them to use either Kiswahili or English, as these are the only constitutionally sanctioned official languages of Parliament.
- **Result:** This rule ensures the proceedings are understood by all members and the public, maintaining legislative efficiency and accessibility.

Article 121: Decisions of Parliament

121. Except as otherwise provided in this Constitution—

(a) any question proposed for decision in a House of Parliament shall be decided by a **majority of the members present and voting**;

(b) a majority of the members of the House shall form a **quorum**; and

(c) the Speaker shall **not vote**.

I. Simple Explanation

Article 121 lays down the standard operating procedures for making decisions in Parliament, covering voting rules and the minimum number of members required to transact business.

1. **Quorum (Clause b):** To legally sit and transact business, a House must meet its **quorum**—a **majority (more than half)** of the total membership. If the quorum is not met, the sitting is invalid.
2. **Voting Rule (Clause a):** Unless the Constitution specifies a higher threshold (like the two-thirds majority for removal of a Speaker or overriding a veto), all questions are decided by a **simple majority** of those **present and voting** (abstentions are not counted).

3. **Speaker's Role (Clause c):** The Speaker (or the person presiding) is **not allowed to vote**, ensuring they maintain neutrality.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection from Undemocratic Votes	The quorum rule ensures that laws are not passed by a tiny, unrepresentative fraction of Parliament. At least half of all members must be present for a vote to be valid.
Fairness of Debate	The rule that the Speaker cannot vote maintains the impartiality of the chair, ensuring that the person controlling the debate does not exert political influence over the outcome.

III. Real-World Example

- **Scenario:** A House of Parliament has 350 members. On a day of a crucial vote, only 150 members are present.
- **Action based on Article 121(b):** The opposition calls for a count to establish the **quorum**. Since 150 is less than 176 (the majority of 350), the House is declared to lack a quorum, and the sitting must be adjourned.
- **Result:** This ensures that major decisions are made only when a substantial portion of the people's representatives are present and participating.

Article 122: Voting in Parliament

122. (1) Subject to clause (3), voting in either House of Parliament is usually by **electronic voting**.

(2) The Speaker of the House shall **preside** at the time of voting.

(3) Voting shall be by **roll-call voting** (where members' names are called and recorded) in respect of—

(a) the **final vote on a Bill**; and

(b) any question requiring a **special majority**.

I. Simple Explanation

Article 122 defines the standard and mandatory methods for conducting votes in Parliament.

1. **Standard Method (Clause 1):** The normal method for voting on minor issues is **electronic voting**.
2. **Roll-Call Voting (Clause 3):** For the most important decisions, voting must be conducted by **roll-call** (where each member's vote is individually recorded and published). This is mandatory for:
 - The **final vote on a Bill** (ensuring MPs can't hide their position on a law).
 - Any question requiring a **special majority** (e.g., overriding a veto, removing a Speaker).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability	The mandatory roll-call voting for the final vote on a law (Clause 3a) is a crucial check. You can look at the published parliamentary record (Hansard) and know exactly whether your MP voted for or against a specific law.
Protection of Integrity	This prevents MPs from voting one way publicly and another way privately on important legislation.

III. Real-World Example

- **Scenario:** Parliament is voting on the *Finance Bill* (which raises taxes). The voting results are initially displayed electronically but only show the numbers (e.g., 170 Ayes, 150 Nays).
- **Action based on Article 122(3)(a):** Since this is the **final vote on a Bill**, the Speaker must order a **roll-call vote** where each member's name and vote (Yes or No) is recorded and made public.
- **Result:** This constitutional rule ensures maximum transparency on decisions that directly affect the daily lives and taxes of citizens.

Article 123: County Delegation of Legislation

123. (1) The National Assembly may **not delegate its power to make laws to any county government**.

(2) The Senate, by resolution supported by **two-thirds of its members**, may **delegate its law-making power** to a county government in respect of matters that are wholly or mainly the responsibility of the county government.

I. Simple Explanation

Article 123 defines the rules for **delegation of legislative power** between the national and county governments, ensuring that the constitutional division of powers (devolution) is maintained.

1. **No National Delegation to County (Clause 1):** The National Assembly **cannot** simply offload its law-making duties onto a county government.
2. **Senate Delegation (Clause 2):** The **Senate** can delegate its law-making power to a county government, but only for matters that are **wholly or mainly the county's responsibility** (e.g., creating specific local laws for agriculture or public health). This requires a **two-thirds majority** vote in the Senate.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection of Devolution	The limits on delegation ensure that the National Assembly remains accountable for national laws, while the Senate can empower counties to create highly specific local rules where appropriate.
Right to Local Law	The Senate's delegation power ensures that if your county has a unique local issue, it can be empowered to create a specific, local law without waiting for the national Parliament to act.

III. Real-World Example

- **Scenario:** The Senate wishes to empower the Nairobi County Government to create specific, innovative laws for managing traffic and zoning that are unique to a major city.
- **Action based on Article 123(2):** The Senate passes a resolution, supported by two-thirds of its members, delegating its legislative power over specific local functions to the Nairobi County Assembly.
- **Result:** The County Assembly can now pass laws with the constitutional authority of the Senate, enabling flexible, localized solutions for devolved functions.

Article 124: Standing Orders

124. (1) Each House of Parliament may make **Standing Orders** to regulate how its proceedings shall be conducted.

(2) The Standing Orders may establish **committees** to—

- (a) facilitate the work of the House;
- (b) consider Bills;
- (c) scrutinise the conduct and administration of State organs; and
- (d) scrutinise reports and submissions to the House.

I. Simple Explanation

Article 124 grants both the National Assembly and the Senate the power to create their own **internal rules (Standing Orders)** for how debates are run, how members behave, and how work is organized.

1. **Internal Autonomy (Clause 1):** Each House is autonomous and makes its own rules of procedure.
2. **Committee Establishment (Clause 2):** The Standing Orders must provide for the establishment of **committees** (like the Public Accounts Committee, Justice Committee, etc.) to conduct detailed work, scrutinize the government's **conduct and administration**, and process Bills.

II. Citizen's Right & Personal Impact

- **Right to Orderly Government:** This ensures that Parliament follows predictable procedures, preventing chaos and ensuring that all legislative work is done systematically.
- **Effective Scrutiny:** The use of committees, empowered by the Standing Orders, ensures that the complex work of reviewing the national budget and investigating corruption is done thoroughly by specialized bodies.

III. Real-World Example

- **Scenario:** A committee is investigating a corruption scandal involving a national parastatal.
- **Action based on Article 124(2):** The committee uses the powers granted to it by the **Standing Orders** to summon witnesses, demand documents, and compel public officers to answer questions, ensuring effective legislative oversight.
- **Result:** Without the constitutional authority to create these internal rules and committees, Parliament could not effectively execute its oversight role (Article 95/96).

Article 125: Power to summon witnesses

125. (1) Either House of Parliament, and any of its **committees**, has power—

(a) to **summon any person** to appear before it to give evidence or provide information; and

(b) to require any person or institution to **produce any document** or record relevant to its proceedings.

(2) A House or committee may **issue a warrant** to compel the attendance of any person who has been summoned but has refused or failed to appear.

I. Simple Explanation

Article 125 grants Parliament and its committees the powerful, legally enforceable authority to compel attendance and obtain any information necessary for their oversight functions.

1. **Mandatory Compliance (Clause 1):** Parliament or its committees can **summon any person** (citizens, corporate CEOs, public officers) to testify and can require the production of **any relevant document or record** (e.g., bank statements, contracts, government files).
2. **Enforcement (Clause 2):** If a person refuses to comply with a summons, Parliament can **issue a warrant** (a formal order for arrest) to physically compel their attendance.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability	This is the ultimate tool for legislative oversight. It ensures that no person, however powerful (including former presidents, ministers, or CEOs), can ignore a parliamentary investigation into the misuse of public funds or national policy.
Protection of Public Interest	This power ensures that Parliament can get to the truth of corruption scandals or policy failures by compelling the attendance of witnesses and the production of evidence.

III. Real-World Example

- **Scenario:** A former Cabinet Secretary is summoned by the Public Accounts Committee (PAC) to explain missing billions of shillings from a national ministry but refuses to appear.
- **Action based on Article 125(2):** The PAC votes to issue a **warrant** for the former CS's arrest.
- **Result:** This warrant is legally binding on the Inspector General of Police, who must execute it. The constitutional authority of Article 125 ensures that the power of oversight is supreme and enforceable.

Article 126: Location of Parliament

126. (1) The proceedings of Parliament shall be held at the **Parliament Buildings in Nairobi**.

(2) Either House may resolve to hold a sitting **in any place within Kenya** other than the Parliament Buildings, if the Speaker determines that it is necessary or desirable to do so.

I. Simple Explanation

Article 126 sets the primary location for parliamentary sittings while allowing flexibility when necessary.

1. **Fixed Location (Clause 1):** The official venue for Parliament is the **Parliament Buildings in Nairobi**.
2. **Flexibility (Clause 2):** Either House can decide to hold a sitting **elsewhere in Kenya**, but only if the Speaker deems it **necessary or desirable** (e.g., to engage citizens in a particular region, or in case of a security threat in Nairobi).

II. Citizen's Right & Personal Impact

- **Right to Centralized Government:** This ensures that the legislative capital is fixed and recognizable.
- **Right to Regional Access:** The provision for sittings outside Nairobi allows citizens in remote counties to directly engage with and observe the work of Parliament without traveling to the capital.

III. Real-World Example

- **Scenario:** The Senate wishes to hold a sitting in Turkana County to debate a crucial Bill on resource sharing in arid lands.
- **Action based on Article 126(2):** The Senate passes a resolution, and the Speaker determines it is desirable to hold the sitting in Lodwar, Turkana.
- **Result:** The sitting is constitutionally valid. This ensures that the legislative body can move closer to the people whose lives are affected by the laws being debated.

Article 127: Parliamentary Service Commission

127. (1) There is established the **Parliamentary Service Commission (PSC)**.

(2) The Commission shall consist of—

(a) the **Speaker** of the National Assembly, as chairperson;

(b) a majority leader and a minority leader (Article 108);

(c) **seven members** appointed by Parliament; and

(d) the Clerk of the Senate, as Secretary.

(3) The Commission is responsible for—

(a) **providing services and facilities to Parliament** and its committees;

(b) **constituting offices** in the parliamentary service; and

(c) **determining the allowances and terms of service** of members of Parliament and staff.

I. Simple Explanation

Article 127 establishes the **Parliamentary Service Commission (PSC)**, the body that manages the administrative and financial affairs of Parliament, including the welfare of MPs and staff.

1. **Composition (Clause 2):** The PSC is led by the **Speaker of the National Assembly** and includes the Majority and Minority Leaders, plus seven other members appointed to ensure political balance.
2. **Functions (Clause 3):** The PSC is responsible for the internal management of Parliament: **providing all services** (e.g., offices, technology, security), **staffing the parliamentary service**, and **setting salaries and terms of service** for MPs and staff.

II. Citizen's Right & Personal Impact

- **Right to Efficient Service:** The PSC ensures that Parliament runs efficiently, allowing your representatives to focus on law-making and oversight.

- **Transparency in MP Pay:** The PSC's role in determining allowances (Clause 3c) ensures there is a specific, formal body responsible for setting and publishing the financial terms of service for elected officials.

III. Real-World Example

- **Scenario:** Parliament requires new technology to allow for hybrid (physical and virtual) committee sittings.
- **Action based on Article 127(3)(a):** The **Parliamentary Service Commission (PSC)** uses its mandate to procure and install the necessary services and facilities.
- **Result:** This administrative body, with a politically balanced composition, ensures Parliament has the necessary resources to execute its constitutional duties.

Article 128: Clerks and staff of Parliament

128. (1) There shall be a **Clerk** for each House of Parliament, appointed by the Parliamentary Service Commission (PSC).

(2) The Clerk of the relevant House is the **chief executive officer** of the staff of that House.

(3) The offices of the Clerks and the staff of Parliament shall be offices in the **Parliamentary Service**.

I. Simple Explanation

Article 128 provides for the appointment of the **Clerks**—the senior administrative staff—for the National Assembly and the Senate.

1. **Clerk Appointment (Clause 1):** A **Clerk** for each House is appointed by the **Parliamentary Service Commission (PSC)**.
2. **Chief Executive Role (Clause 2):** The Clerk is the **CEO** of the staff of that House, responsible for all non-political, day-to-day administrative functions (e.g., managing Hansard, controlling the order paper, advising the Speaker).

II. Citizen's Right & Personal Impact

- **Right to Orderly Proceedings:** The Clerk's role ensures that all legislative and financial procedures are followed accurately and legally, preventing costly procedural mistakes.
- **Non-Partisan Administration:** The Clerk is a career civil servant, not a politician, ensuring that the critical administrative functions of the House are performed neutrally.

III. Real-World Example

- **Scenario:** A procedural question arises during a complex debate on a Bill.
- **Action based on Article 128(2):** The Speaker consults the **Clerk** of the House, who, as the **chief executive officer** and procedural expert, provides non-partisan advice on the Standing Orders and constitutional compliance.
- **Result:** This ensures that parliamentary decisions are procedurally sound and less susceptible to legal challenge based on process failure.



“Parliamentarians must always remember that they are the people’s representatives. They must put themselves at the service of their nation and not their service.” – P.L.O Lumumba

Chapter Nine: The Executive

Here is the breakdown for Article 129: Executive authority, which introduces the body responsible for executing the laws of the land. This is the first article in Chapter Nine: The Executive.

Article 129: Executive Authority

129. (1) The executive authority of the Republic is derived from the people of Kenya and shall be exercised in accordance with this Constitution.

(2) Executive authority may be exercised either directly or through State organs or a hierarchy of persons subordinate to the President.

I. Simple Explanation

Article 129 defines the source and nature of the Executive authority—the power to manage the day-to-day affairs of the government, implement laws passed by Parliament, and lead the administration.

Source and Constraint (Clause 1): The Executive's power comes from the people (popular sovereignty) and, therefore, must always be exercised in strict accordance with the Constitution. This places a legal limit on the President's authority.

Manner of Exercise (Clause 2): This authority can be exercised by the President directly (through orders and decisions) or indirectly through the vast hierarchy of the civil service, Cabinet, security forces, and other State organs subordinate to the President.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Constitutional Governance This article ensures that the President, as the head of the Executive, is not above the law. Every order they issue, and every policy they implement, must comply with the Constitution. **Right to Accountable Administration** Since the Executive is exercised through a hierarchy, citizens can hold the entire civil service accountable for its actions, as every public servant acts under the ultimate authority derived from this article.

III. Real-World Example

Scenario: The President issues a directive that orders all County Governors to immediately implement a new national policy on local market fees, bypassing the County Assemblies.

Action based on Article 129(1): A County Governor or the Senate challenges the directive in the Supreme Court. They argue that while the President has Executive authority, it must be exercised in accordance with the Constitution. Directing a devolved function bypasses the constitutional structure of devolution (Chapter 11).

Result: The court would likely rule the directive unconstitutional because the President's executive authority is limited by the constitutional division of power. This article confirms

that the Executive's power is one of implementation, not of overriding the supreme law or the mandates of other State organs.

Article 130: The National Executive

130. (1) The National Executive of the Republic comprises the President, the Deputy President and the rest of the Cabinet.

(2) The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

(3) The seat of the national executive is Nairobi, or such other place as Parliament may prescribe.

I. Simple Explanation

Article 130 formally defines the individuals who make up the central government administration (The National Executive) and requires that the Executive visually reflects the diversity of the nation.

Composition (Clause 1): The core of the National Executive is the President, the Deputy President, and the Cabinet (Cabinet Secretaries and the Attorney-General).

Diversity Requirement (Clause 2): When appointing the Cabinet, the President is constitutionally required to ensure its composition reflects the regional and ethnic diversity of Kenya. This promotes national unity and inclusivity in the highest decision-making body.

Location (Clause 3): The capital seat of the Executive is fixed in Nairobi, unless Parliament passes a law changing it.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Inclusive Governance This article provides the legal basis for demanding that the Cabinet is representative of the vast ethnic and regional diversity of Kenya, ensuring fair representation in the decision-making process. **Clear Accountability** You know precisely who holds the ultimate executive authority: the President and the Cabinet, making accountability clear and traceable.

III. Real-World Example

Scenario: A President appoints a Cabinet where 80% of the Cabinet Secretaries come from only two of Kenya's 47 counties.

Action based on Article 130(2): A civil society group or the opposition challenges the appointments in court. They argue that the Cabinet's composition fails to reflect the regional and ethnic diversity of the people of Kenya, violating a constitutional mandate.

Result: The courts would likely declare the appointments unconstitutional and compel the President to revise the list to achieve the required diversity and inclusivity, affirming the mandatory nature of the diversity clause.

Article 131: Authority of the President

131. (1) The President is the Head of State and Government and the Commander-in-Chief of the Kenya Defence Forces.

(2) The President shall—

- (a) respect, uphold and safeguard this Constitution;
 - (b) safeguard the sovereignty of the Republic;
 - (c) promote and enhance the unity of the nation;
 - (d) promote respect for the diversity of the people and the integrity of the nation; and
 - (e) ensure the protection of human rights and fundamental freedoms and the rule of law.
- (3) The President is a symbol of national unity.

I. Simple Explanation

Article 131 defines the supremacy and duties of the President, who holds the highest office in the land, combining the ceremonial role of Head of State with the political role of Head of Government.

Triple Role (Clause 1): The President has three distinct roles: Head of State (ceremonial leader), Head of Government (political executive), and Commander-in-Chief (of the military).

Constitutional Obligations (Clause 2): The President has an explicit, non-negotiable duty to:

Uphold the Constitution: This is the most crucial duty; the President must respect, uphold, and safeguard the supreme law.

Protect Rights: The President must ensure the protection of human rights and the rule of law.

Promote Unity: The President must enhance the unity and diversity of the nation.

Symbolic Role (Clause 3): The President is meant to be a non-partisan symbol of national unity.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to a Constitutional Leader This guarantees that your highest leader is bound by law. If the President violates the Constitution or human rights, they are in breach of their solemn constitutional duty. **Protection of the Nation** The President's duty to safeguard the sovereignty ensures that national assets and territorial integrity are protected against external threats.

III. Real-World Example

Scenario: The President, during a public address, makes statements that incite ethnic tensions or discrimination against a minority group.

Action based on Article 131(2)(c) and (d): A human rights group or citizen challenges the action. They argue that the President is in violation of the constitutional duty to promote and enhance the unity of the nation and promote respect for the diversity of the people.

Result: The Supreme Court would likely caution the President, affirming that the Head of State's actions are legally bound by the high standards of unity and respect for diversity set out in this article.

Article 132: Functions of the President

132. (1) The President shall—

- (a) address the nation and the opening of each newly elected Parliament;
 - (b) chair the Cabinet;
 - (c) direct and co-ordinate the functions of ministries and government departments; and
 - (d) receive foreign diplomatic representatives and assent to or ratify international agreements.
- (2) The President shall nominate and, with the approval of the National Assembly, appoint—
- (a) Cabinet Secretaries;
 - (b) the Attorney-General; and
 - (c) Principal Secretaries.
- (4) The President shall appoint and dismiss (with parliamentary approval where necessary) other key officers including ambassadors, high commissioners, and public officers where the Constitution or legislation so provides.
- (5) The President shall ensure that the international obligations of the Republic are fulfilled (Article 2).

I. Simple Explanation

Article 132 details the specific Executive, Legislative, and Diplomatic functions the President performs to run the government and manage international relations.

Leadership (Clause 1): The President is the operational head—they chair the Cabinet (setting the agenda) and direct the ministries (managing the civil service). They also give ceremonial addresses to the nation.

Appointment Power (Clause 2 & 4): The President appoints the most senior officials, including Cabinet Secretaries, the Attorney-General, and Principal Secretaries. Crucially, these appointments require the approval of the National Assembly (a check on executive power).

Foreign Relations (Clause 1d & 5): The President is the nation's chief diplomat, responsible for receiving ambassadors and ensuring international treaties are fulfilled.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Legislative Check The requirement for the National Assembly to approve Cabinet Secretaries and other senior officials ensures that the President cannot appoint persons who lack integrity or competence. Right to Accountability You know that the President is ultimately responsible for the performance of all ministries and government departments.

III. Real-World Example

Scenario: The President nominates an individual for the position of Cabinet Secretary for Sports who has a history of financial misconduct.

Action based on Article 132(2): The nominee's name is sent to the National Assembly for approval. The relevant parliamentary committee conducts a background check and public hearings. The committee, citing the lack of integrity (Chapter 6), recommends that the Assembly reject the nomination.

Result: If the National Assembly votes against the nominee, the President cannot appoint them, demonstrating the powerful check that the legislature holds over the Executive's appointment power.

Article 133: Power of Mercy

133. (1) The President has the power to grant a pardon to a person convicted of an offence.

(2) The President may exercise this power only in accordance with the advice of the Advisory Committee on the Power of Mercy.

(3) The Power of Mercy may be exercised by—

(a) granting a free or conditional pardon;

(b) postponing the punishment;

(c) substituting a less severe form of punishment (e.g., life imprisonment instead of a death sentence); or

(d) remitting (cancelling) all or part of a punishment.

I. Simple Explanation

Article 133 grants the President the Power of Mercy, allowing them to change or forgive a punishment imposed by a court. This is a final check on the judicial system.

President's Power (Clause 1): The President can grant a pardon or modify a sentence.

Mandatory Advice (Clause 2): Crucially, this power is not arbitrary; the President must only act in accordance with the advice of the Advisory Committee on the Power of Mercy (which is established by law).

Forms of Mercy (Clause 3): Mercy can take the form of a pardon (forgiving the crime), postponing a sentence, substituting a lighter sentence, or cancelling part of a sentence.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Final Clemency If you or a loved one has exhausted all court appeals and received a harsh sentence, the Power of Mercy provides a final, compassionate mechanism for review. **Protection from Arbitrary Action** The requirement for the President to follow the advice of the Advisory Committee ensures that this power is not used for political gain or personal favouritism, but based on reasoned, non-partisan recommendations.

III. Real-World Example

Scenario: A person convicted of murder faces a death sentence (which is currently not executed). Their lawyer argues that the individual has reformed, is very old, and has chronic health issues.

Action based on Article 133: The Advisory Committee reviews the case, considering the person's conduct, health, and judicial history. The Committee advises the President to substitute the death sentence with a term of life imprisonment (Clause 3c).

Result: The President, acting on the constitutional advice of the Committee, officially commutes the sentence. This article ensures that the exercise of State compassion is systematic and legally advised.

Article 134: Temporary exercise of Presidential powers

134. (1) A person who is acting as President in terms of Article 147(2) shall not exercise the President's powers—

- (a) of nomination or appointment to any office;
- (b) of dismissal of a Cabinet Secretary or other appointed State officer;
- (c) to veto a Bill passed by Parliament; or
- (d) to exercise the Power of Mercy.

(2) Parliament shall enact legislation to regulate the exercise of the powers of the Acting President.

I. Simple Explanation

Article 134 restricts the powers of a person who is temporarily Acting as President (usually the Deputy President when the President is away or incapacitated). The purpose is to prevent the Acting President from making major, permanent decisions.

Limited Powers (Clause 1): The Acting President is explicitly banned from making four major policy decisions:

Appointments: They cannot nominate or appoint senior officials (Cabinet Secretaries, Ambassadors, etc.).

Dismissals: They cannot fire any appointed State officer.

Veto: They cannot veto a Bill passed by Parliament.

Mercy: They cannot exercise the Power of Mercy.

Legislative Control (Clause 2): Parliament must pass a law providing the detailed rules for how the Acting President can exercise their remaining powers.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Protection from Power Grab This is a crucial constitutional check that prevents the Deputy President (or whoever is Acting President) from making wide-ranging, permanent political changes while the elected President is temporarily absent. **Stability of Government** The ban on dismissals and appointments ensures that the Executive branch remains stable and that the President's full term appointments are not easily overturned.

III. Real-World Example

Scenario: The President travels abroad for a three-week State visit. The Deputy President assumes the role of Acting President. During this period, the Acting President attempts to dismiss the Cabinet Secretary for Finance.

Action based on Article 134(1)(b): The Cabinet Secretary challenges the dismissal in court. They argue that the Acting President is constitutionally banned from dismissing an appointed State officer.

Result: The court would immediately declare the dismissal null and void, ruling that the Acting President overstepped their constitutionally restricted temporary powers.

Article 135: The President's Decisions

135. A decision of the President in the exercise of any power conferred by this Constitution or legislation shall be in writing and be published in the Gazette.

I. Simple Explanation

Article 135 is a simple but powerful guarantee of transparency for the President's official actions.

Requirement for Transparency: Any official decision made by the President must be in writing and must be officially published in the Kenya Gazette (the official government journal).

II. Citizen's Right & Personal Impact

Right to Official Notice: This ensures that the public, State organs, and the courts know exactly what the President has decided and when the decision was made, removing ambiguity.

Clarity of Lawfulness: It allows for any Presidential decision to be officially challenged in court, as the written and published nature provides a clear, verifiable record of the action.

III. Real-World Example

Scenario: The President verbally announces a new public holiday.

Action based on Article 135: Until the declaration is formally in writing and published in the Gazette, the public holiday is not legally binding.

Result: This article ensures that all binding presidential decisions (like declaring a state of emergency, appointing a commission of inquiry, or granting a pardon) are formalized and made public, upholding the principle of accountability.

Article 136: Election of the President

136. (1) The President shall be elected by registered voters in a national election held on the second Tuesday in August in every fifth year.

(2) A person shall not be a candidate in a presidential election unless the person is nominated by a political party or is an independent candidate who is supported by the requisite number of registered voters.

(5) The President shall hold office for a term not exceeding five years.

Note: Clause (3) and (4) deal with the timing of the election after the expiry of the term.

I. Simple Explanation

Article 136 sets the date, frequency, and nomination rules for the election of the President of the Republic of Kenya.

Fixed Date (Clause 1): The Presidential election is held on a fixed date—the second Tuesday in August every fifth year—concurrently with the General Election (Article 101).

Nomination Rules (Clause 2): Candidates must be nominated by a political party or, if running as an independent candidate, must secure the minimum number of signatures from registered voters (as set by law).

Term Limit (Clause 5): The President serves a fixed term of five years.

II. Citizen's Right & Personal Impact

Right to Predictable Democracy: You are guaranteed that the highest office in the land will be decided on a fixed, known date every five years, providing political certainty.

Protection of Sovereignty: This ensures that the President is elected directly by all registered voters of the entire nation.

III. Real-World Example

Scenario: A high-profile individual wants to run for President as an independent candidate but only submits signatures from voters in two counties.

Action based on Article 136(2): The IEBC would reject the nomination. The law passed under this article requires the independent candidate to be supported by the requisite number of voters spread across a minimum number of counties, reflecting the national nature of the office.

Result: The strict nomination rules ensure that only candidates with genuine national support are eligible to contest the election for the highest office.

Article 137: Qualifications and Disqualifications for Election as President

137. (1) A person is qualified for election as President if the person—

- (a) is a citizen by birth;
- (b) is qualified to be elected as a member of Parliament (Article 99);
- (c) is nominated by a political party or is an independent candidate; and
- (d) is nominated by not fewer than two thousand voters from each of a majority of the counties (i.e., at least 25 counties).

(2) A person is disqualified from being elected as President if the person—

- (a) owes allegiance to a foreign state; or
- (b) has, within the immediately preceding five years, held office as a member of the Independent Electoral and Boundaries Commission (IEBC).

I. Simple Explanation

Article 137 sets the specific, stringent requirements for becoming President, emphasizing national loyalty and the need for broad, national support.

Qualifications (Clause 1): The candidate must be a citizen by birth (meaning they were born Kenyan), must be eligible to be an MP (Article 99), and, most stringently, must secure nomination signatures from at least 2,000 voters in at least 25 counties (a majority of the 47 counties).

Disqualifications (Clause 2): The candidate is banned if they:

Owe allegiance to a foreign state (reinforcing the Article 78 ban on dual allegiance).

Have served in the IEBC in the preceding five years (to ensure the electoral body's neutrality).

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact **Right to Undivided Loyalty** The ban on foreign allegiance ensures that the highest office is held by someone whose commitment is solely to the Republic of Kenya. **Right to National Consensus** The requirement for signatures across at least 25 counties ensures that Presidential candidates demonstrate genuine support across Kenya's diverse regions and cannot be elected based solely on concentrated regional support.

III. Real-World Example

Scenario: A Presidential candidate is proven to have gained U.S. citizenship later in life (i.e., not a citizen by birth).

Action based on Article 137(1)(a): The IEBC would disqualify the candidate, as the requirement to be a citizen by birth is a mandatory constitutional provision for the Presidency.

Result: This clause is a constitutional restriction that limits the pool of potential candidates, ensuring that the Head of State meets the highest standard of Kenyan origin.

Article 138: Procedure at Presidential Election

(1) If only one candidate is nominated, that candidate shall be declared elected.

(4) A candidate shall be declared elected as President if the candidate receives—

(a) more than half of all the votes cast in the election; and

(b) at least twenty-five per cent of the votes cast in each of more than half of the counties (i.e., in at least 25 counties).

(5) If no candidate satisfies the requirements in clause (4), a fresh election shall be held within thirty days.

(6) The only candidates in a fresh election are—

(a) the candidate, or candidates, who received the greatest number of votes; and

(b) the candidate, or candidates, who achieved the requisite majority of votes in the greatest number of counties.

(8) A person who votes in a presidential election shall not vote in any other election (e.g., MP or Governor) at the same general election.

(10) A presidential election shall be cancelled and a new election held if a candidate dies on or before the scheduled election date.

I. Simple Explanation

Article 138 defines the complex two-part threshold required for a candidate to be declared President and the procedures for a potential run-off election.

Two-Part Win Threshold (Clause 4): To win on the first round, a candidate must achieve a double majority:

50% + 1: Receive more than half of the total votes cast nationwide.

25% Rule: Receive at least 25% of the votes in at least 25 of the 47 counties.

Run-off (Clause 5): If no candidate meets this double majority, a fresh election (run-off) must be held within 30 days between the top candidates who met the highest thresholds.

Cancellation (Clause 10): If a Presidential candidate dies before the election, the entire election is cancelled, and a fresh election must be held.

II. Citizen's Right & Personal Impact

Citizen's Right Personal Impact Right to Inclusive Leadership The 25% rule is a fundamental safeguard against ethnic balkanization. It ensures that the President must be a truly national leader with support across all major regions of the country, promoting unity. Clear Path to Presidency You know precisely the constitutional hurdles a candidate must clear to be declared the winner, ensuring that the IEBC's declaration is legally verifiable.

III. Real-World Example

Scenario: In the first round of a Presidential election, Candidate A receives 55% of the total national vote but only secures 25% of the vote in 23 counties (fewer than the required 25 counties).

Action based on Article 138(4): Although Candidate A secured the national simple majority (55%), they failed the 25% rule.

Result: No candidate is declared the winner. A fresh election (run-off) must be held between the top two candidates within 30 days (Clause 5). This illustrates how the Constitution protects national cohesion over simple numerical victory.

Here is the breakdown for **Article 139: Assumption of office of President**, which defines the transfer of executive power and the process the President must undergo to formally take office. This is the first article in **Part 2 of Chapter Nine: The President and the Deputy President**.

Article 139: Assumption of Office of President

139. (1) The President-elect shall assume office after taking the prescribed **oath or affirmation** of allegiance and the due execution of the functions of office.

(2) The inauguration of the President-elect shall take place in a **public ceremony** before the Chief Justice, or, in the absence of the Chief Justice, the Deputy Chief Justice.

(3) The President-elect shall assume office on the **first Tuesday following—**

(a) the **fourteenth day** after the declaration of the results of the presidential election, if there is no petition challenging the election; or

(b) the **seventh day** following the date on which the court declares the election to be valid, if there was a petition challenging the election.

I. Simple Explanation

Article 139 governs the formal transfer of power from the outgoing President to the **President-elect**, ensuring the process is public, legal, and orderly.

1. **Mandatory Oath (Clause 1):** To formally take office, the President-elect must take a prescribed **oath or affirmation** (a solemn promise) to uphold the Constitution and faithfully execute their duties.
2. **Public Ceremony (Clause 2):** The inauguration must be a **public ceremony** presided over by the **Chief Justice** (or the Deputy Chief Justice), adding judicial legitimacy and solemnity to the transfer of power.
3. **Timeline for Assumption (Clause 3):** This sets two strict timelines, depending on the outcome of the election challenge period:
 - **No Petition:** If no one challenges the result, the inauguration occurs on the **first Tuesday after 14 days** following the result declaration.
 - **With Petition:** If the result is challenged in court, the inauguration occurs on the **seventh day** after the **Supreme Court** finally rules that the election was **valid**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to a Constitutional Transfer	This article ensures that the transfer of executive authority is a legal, transparent, and defined process, avoiding any confusion or political vacuum.
Judicial Finality	The timeline ensures that if an election is challenged, the new President cannot take office until the court process is fully exhausted and the election's validity is definitively confirmed.
Right to Public Witness	You have the right to witness the public ceremony where the new President formally pledges allegiance to the Constitution.

III. Real-World Example

- **Scenario:** The IEBC declares the winner of the presidential election on August 15th. A losing candidate files a petition on August 22nd. The Supreme Court rules the election valid on September 5th.
- **Action based on Article 139(3):** Since there was a petition, the inauguration cannot follow the 14-day rule. It must follow the "seventh day" rule. The inauguration will take place on the **first Tuesday following September 12th** (seven days after the court ruling).
- **Result:** This constitutional rule ensures that political power always defers to the rule of law, as the **Supreme Court's determination of validity** is the final prerequisite for the assumption of office.

Article 140: Declaration of Election of President

140. (1) A person may file a petition in the **Supreme Court** to challenge the election of the President-elect.

(2) A petition under clause (1) shall be filed **within seven days** after the date of the declaration of the results of the presidential election.

(3) The Supreme Court shall hear and determine the petition **within fourteen days** after the petition is filed.

(4) If the Supreme Court determines the election of the President-elect to be **invalid**, the court shall declare the result to be **null and void**.

(5) If the Supreme Court determines the election of the President-elect to be valid, the court shall declare the election to be valid.

I. Simple Explanation

Article 140 provides the specific legal procedure for challenging a **Presidential election**, establishing the Supreme Court as the sole venue and setting strict, fast timelines.

1. **Sole Jurisdiction (Clause 1):** Only the **Supreme Court**—Kenya's highest court—has the power to hear a challenge to a presidential election.

2. **Strict Timelines (Clauses 2 & 3):** The legal process is extremely rapid:
 - **Filing:** A petition must be filed **within 7 days** of the result declaration.
 - **Determination:** The Supreme Court must hear and issue its final judgment **within 14 days** of the petition being filed.
3. **Consequence of Invalidity (Clause 4):** If the Supreme Court finds the election was flawed (e.g., failed to meet the standards of Article 81 or 138), it must declare the result **null and void**, meaning the election is cancelled.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to a Valid President	This guarantees that the highest office is held by someone who won a free and fair contest. You have the right to challenge any flawed outcome through the highest court.
Judicial Supremacy	This article confirms the Judiciary's role as the final arbiter of political power, ensuring that the process is decided by law, not political force.
Speedy Resolution	The short timelines prevent political instability from dragging on, ensuring the country can quickly move forward under a confirmed leadership.

III. Real-World Example

- **Scenario:** Following the declaration of the presidential election result, the runner-up believes the process was flawed by systemic irregularities.
- **Action based on Article 140(1) and (2):** The runner-up files a petition directly with the **Supreme Court within seven days**. The Supreme Court then commences the hearing and must issue its judgment within the next **fourteen days**.
- **Result:** In 2017, the Supreme Court used this article and its power under Clause (4) to declare the presidential election invalid, highlighting the power of the Constitution to protect the democratic process from procedural flaws.

Article 141: Declaration of Elected President

141. (1) The person elected as President shall be inaugurated in accordance with Article 140.

(2) The term of the President commences on the day the President is **sworn in**.

(3) The President shall **not hold office for more than two terms**.

I. Simple Explanation

Article 141 reinforces the core rules regarding the President's term of office and the maximum number of terms allowed.

1. **Term Commencement (Clause 2):** The President's five-year term officially begins the day the President-elect is **sworn in** (inaugurated), following the ceremony outlined in Article 139.

2. **Two-Term Limit (Clause 3):** The President **shall not hold office for more than two terms**. This is an absolute constitutional limit on the Executive's power.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Change Leadership	This is the most important safeguard against dictatorship or life presidency. It guarantees that the highest office will change hands, ensuring rotation of power and democratic vitality.
Clarity of Term	The fixed five-year term, commencing on the swearing-in date, provides legal certainty about the duration of the President's mandate.

III. Real-World Example

- **Scenario:** A President who is serving their second term attempts to seek a constitutional amendment to allow them to run for a third term.
- **Action based on Article 141(3):** Any court considering the proposed amendment would cite this clause.
- **Result:** The courts would likely rule that the **two-term limit** is part of the **basic structure** of the Constitution (though not explicitly listed in Article 255's protected clauses), and any attempt to circumvent it for the benefit of a sitting President is an unconstitutional violation of the democratic character of the Republic.

Article 142: Vacancy in the Office of President

142. (1) The office of President shall become vacant if the holder of the office—

(a) **dies**;

(b) **resigns** in writing to the Speaker of the National Assembly; or

(c) **otherwise ceases to hold office** under Article 144 (incapacity) or 145 (impeachment).

(2) A person who has been President, or acting President, may not assume the office of President again.

I. Simple Explanation

Article 142 lists the only ways the Presidency can become legally **vacant** before the five-year term ends, and reinforces the term limit rules.

1. **Causes of Vacancy (Clause 1):** The President leaves office if they **die**, **resign**, or are legally removed due to **incapacity** (ill health) or **impeachment** (gross misconduct).
2. **No Return (Clause 2):** A person who has previously held office as President (even if only briefly as Acting President) cannot assume the office again. This prevents them from using an interim period to circumvent the two-term limit (Article 141).

II. Citizen's Right & Personal Impact

- **Clarity of Succession:** This ensures that the procedures for presidential succession (Article 146) are triggered only by clear, constitutionally defined events, preventing political confusion.
- **Integrity of Term Limits:** The "No Return" rule protects the two-term limit by preventing anyone who has benefited from a presidential term from starting another one.

III. Real-World Example

- **Scenario:** The President submits a letter of resignation to the Speaker of the National Assembly.
- **Action based on Article 142(1)(b):** The moment the Speaker receives the written resignation, the office of President becomes **vacant**, immediately triggering the constitutional succession process (Article 146).
- **Result:** The Chief Justice would be notified, and the Deputy President would immediately step in as Acting President.

Article 143: Immunity from criminal and civil proceedings

143. (1) Criminal proceedings **shall not be instituted or continued** against the President or a person performing the functions of that office during their **tenure of office**.

(2) Civil proceedings shall not be instituted or continued in a court against the President or a person performing the functions of that office during their **tenure of office** in respect of **anything done or not done in the exercise of their powers** under this Constitution.

(3) The immunity of the President is **not a bar to the institution of civil proceedings** against the President with respect to an act or omission done or not done by the President **in a personal capacity** before or during their tenure of office.

(4) The term of office of the President shall not be taken into account for the purposes of any limitation period (statute of limitation) in respect of any civil claim against the President.

I. Simple Explanation

Article 143 grants the sitting President **temporary immunity** from criminal and certain civil proceedings during their time in office, ensuring they can perform their duties without distraction.

1. **Criminal Immunity (Clause 1):** No new **criminal proceedings** can be filed, and existing ones must be paused, for the duration of the President's term.
2. **Official Civil Immunity (Clause 2):** No civil proceedings can be filed against the President for actions taken **in their official capacity** (e.g., policy decisions).
3. **Personal Liability (Clause 3 & 4):** The immunity **does not** apply to actions taken in a **personal capacity** (e.g., debt, property disputes, or crimes committed before taking office). Crucially, the **time spent as President does not count** against the legal deadline for filing a claim (statute of limitation).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Continuous Governance	This ensures that the President is not constantly distracted by lawsuits and can focus on national leadership.
Right to Future Justice	This article protects your right to sue or charge the President after they leave office. The four or five years they served will not be used by their lawyers to claim the time limit for filing a case has expired.

III. Real-World Example

- **Scenario:** A citizen wants to sue the President over a private land dispute that occurred before the President was elected.
- **Action based on Article 143(3):** The citizen **can** file the civil lawsuit, because the matter relates to an act done in the President's **personal capacity** and is not protected by immunity.
- **Result:** If the President commits a crime while in office, they cannot be charged until they leave office, but the time they served is automatically paused on the legal clock, ensuring they can face justice later.

Article 144: Removal of President on Grounds of Incapacity

144. (1) A member of the National Assembly, supported by **at least a quarter of all members**, may propose a motion for the President's removal on the ground of **incapacity** to perform the functions of office **by reason of physical or mental incapacity**.

(2) If the motion is supported by a majority of the members of the National Assembly, the Speaker shall inform the **Chief Justice**, who shall appoint a **medical tribunal**.

(4) The tribunal shall investigate the President's capacity and report its findings to the Speaker of the National Assembly and the Chief Justice **within fourteen days**.

(5) If the tribunal reports that the President is **incapacitated**, the National Assembly shall vote. If the finding is supported by **at least two-thirds of all members**, the President ceases to hold office.

I. Simple Explanation

Article 144 provides the process for removing a sitting President if they are permanently unable to perform their duties due to severe **physical or mental incapacity**.

1. **Initiation:** The process starts in the **National Assembly** with a motion supported by at least **one-quarter** of the members.
2. **Medical Tribunal:** If the motion passes the Assembly by a simple majority, the **Chief Justice** appoints a five-person **medical tribunal** to investigate the President's health.

3. **Judicial and Legislative Final Step:** If the tribunal finds the President is **incapacitated**, the National Assembly votes again. If **two-thirds** of the members support the finding, the President is **removed**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Effective Governance	This ensures that the nation is not left without capable leadership due to a President's severe or prolonged ill health.
Protection from Political Abuse	The process is heavily protected by legal and medical expertise: the Chief Justice appoints the panel, and the finding requires a medical tribunal report and a high two-thirds majority vote. This prevents the process from being used for minor illnesses or political reasons.

III. Real-World Example

- **Scenario:** A President suffers a severe stroke that leaves them permanently unable to communicate or make decisions.
- **Action based on Article 144:** A quarter of the National Assembly proposes the motion. Once the motion is passed by a simple majority, the Chief Justice appoints the medical tribunal.
- **Result:** If the medical tribunal confirms the permanent incapacity and two-thirds of the Assembly votes to affirm the finding, the President would be removed from office, triggering the succession process (Article 146).

Article 145: Removal of President by Impeachment

145. (1) A member of the National Assembly, supported by **at least one-third of all members**, may propose a motion for the removal of the President—

(a) on the ground of **gross violation of a provision of this Constitution** or any other law;

(b) where there are **serious reasons** for believing the President has committed a **gross misconduct**; or

(c) **gross misconduct**.

(2) If the motion is supported by **at least two-thirds of all members** of the National Assembly, the Speaker shall inform the **Speaker of the Senate**.

(3) The Senate shall convene within **ten days** to hear the charges and investigate the President.

(7) If the impeachment charge is supported by **at least two-thirds of the members of the Senate**, the President **ceases to hold office**.

I. Simple Explanation

Article 145 provides the process for **impeachment**—the removal of the President for legal or ethical failures, transferring the power of removal from the voters to Parliament.

1. **Grounds:** Removal is possible only for grave failures: **gross violation of the Constitution/law** or **gross misconduct**.
2. **Initiation (The Charge):** The motion starts in the National Assembly, requiring the support of one-third of the members, and then passes only if supported by **two-thirds of all members** (a very high bar).
3. **Trial (The Senate):** The charge moves to the **Senate**, which acts as the trial chamber. The Senate must convene within **ten days** to investigate and hear the evidence.
4. **Conviction and Removal:** If the charge is supported by **two-thirds of the Senators**, the President is **removed from office**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountable Leadership	This ensures that even the most powerful person in the land is subject to constitutional accountability for ethical and legal violations.
Separation of Powers	The process is a classic separation of powers check: the National Assembly brings the charges , and the Senate conducts the trial , guaranteeing due process.

III. Real-World Example

- **Scenario:** The President is accused of illegally diverting public funds, constituting a **gross violation of the Constitution** (specifically Article 201 on Public Finance).
- **Action based on Article 145:** One-third of the National Assembly introduces the impeachment motion. If two-thirds vote "Yes," the charge moves to the Senate. The Senate holds a highly publicized trial.
- **Result:** If the charges are proved and two-thirds of the Senators vote to convict, the President is immediately removed from office, triggering succession (Article 146).

Article 146: Vacancy in the office of President and Vice-President

146. (1) If a vacancy arises in the office of President, the **Deputy President shall assume office as President** for the remainder of the term.

(2) If a vacancy arises in the office of Deputy President, the President shall **nominate a person** to fill the vacancy, and the nominee shall be appointed with the approval of the National Assembly.

(3) If vacancies arise in the offices of **President and Deputy President simultaneously**—

(a) the **Speaker of the National Assembly** shall act as President for **ninety days**; and

(b) a **presidential election shall be held within that ninety-day period**.

I. Simple Explanation

Article 146 defines the entire line of **presidential succession** in case of a vacancy.

1. **President Vacancy:** If the President dies, resigns, or is removed, the **Deputy President immediately becomes President** for the remainder of the five-year term (Clause 1).
2. **Deputy President Vacancy:** If the Deputy President's office is vacant, the President nominates a replacement, who must be approved by the **National Assembly** (Clause 2).
3. **Double Vacancy (Clause 3):** If **both** offices are vacant at the same time, the **Speaker of the National Assembly** steps in as Acting President, but only for **90 days**, during which time a fresh **Presidential election must be held**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Immediate Leadership	This article ensures that there is never a leadership vacuum. The line of succession is clear and automatic.
Protection of Democracy	The 90-day rule for a double vacancy ensures that the interim leadership is short-lived, returning power to the voters immediately via a fresh election.

III. Real-World Example

- **Scenario:** The President is removed via impeachment (Article 145).
- **Action based on Article 146(1):** The **Deputy President** immediately and automatically **assumes office as President** for the rest of the term.
- **Result:** There is no need for a new election unless the Deputy President is also removed, dies, or resigns.

Article 147: Functions of the Deputy President

147. (1) The Deputy President shall be the **principal assistant of the President** and shall **deputise** for the President in the execution of the President's functions.

(2) The Deputy President shall **not hold any other State or public office**.

(3) The President may **assign the Deputy President** any other responsibilities as the President considers appropriate.

I. Simple Explanation

Article 147 defines the constitutional roles of the **Deputy President** as the President's chief assistant and successor.

1. **Principal Assistant (Clause 1):** The core duty is to be the President's **principal assistant** and to **deputize** for the President when they are absent or incapacitated.
2. **Full-Time Role (Clause 2):** The Deputy President cannot hold any other public or State office (e.g., cannot also be a Cabinet Secretary), ensuring their full-time attention to the Presidency.
3. **Assigned Duties (Clause 3):** The President can **assign** the Deputy President any additional responsibilities they see fit.

II. Citizen's Right & Personal Impact

- **Clarity of Role:** This clarifies that the Deputy President is primarily the President's co-manager and successor, not an independent center of power.
- **Right to Full Commitment:** The ban on holding other offices ensures the Deputy President is committed solely to the work of the Presidency.

III. Real-World Example

- **Scenario:** The President directs the Deputy President to head a special task force on climate change mitigation.
- **Action based on Article 147(3):** The Deputy President accepts the assignment, as the President is constitutionally empowered to **assign other responsibilities** as they see fit.
- **Result:** This article gives the President flexibility to utilize the Deputy President's skills in specific areas of policy and administration.

Article 148: Election and Removal of Deputy President

148. (1) Each candidate for President shall **nominate a person who is qualified for election as President** to be the candidate for Deputy President.

(2) The Independent Electoral and Boundaries Commission (IEBC) shall declare the candidate nominated by the person elected as President to be the **Deputy President-elect**.

(3) The Deputy President-elect shall be **sworn in** on the same day as the President-elect.

(4) The Deputy President may be removed from office on the same grounds and procedures as the President (Articles 144 & 145).

I. Simple Explanation

Article 148 defines the process for choosing the Deputy President as a joint ticket with the President and the procedure for their removal.

1. **Joint Ticket (Clause 1):** The Deputy President is chosen by the Presidential candidate and runs on a **joint ticket**. The running mate must also meet the qualifications to be President (Article 137).
2. **Automatic Election (Clause 2):** The person nominated by the Presidential winner is automatically declared the **Deputy President-elect**.

3. **Simultaneous Swearing-in (Clause 3):** The Deputy President is **sworn in on the same day** as the President.
4. **Same Removal Procedure (Clause 4):** The Deputy President can be removed from office via the exact same procedures as the President: **incapacity** (Article 144) or **impeachment** (Article 145).

II. Citizen's Right & Personal Impact

- **Clarity of Mandate:** You vote for a joint ticket, meaning you know exactly who will take over if the President's office becomes vacant.
- **Protection from Unilateral Firing:** The President **cannot** fire the Deputy President at will. Removal requires the difficult process of impeachment or incapacity, ensuring the DP's independence.

III. Real-World Example

- **Scenario:** The President announces they wish to remove the Deputy President due to political disagreements.
- **Action based on Article 148(4):** The President must convince the National Assembly to initiate **impeachment proceedings** based on the severe grounds listed in Article 145.
- **Result:** This ensures the stability of the Executive by protecting the Deputy President from being removed solely by the President's desire.

Article 149: Remuneration of the President and Deputy President

149. The remuneration and benefits payable to the President and Deputy President shall be a **charge on the Consolidated Fund** (national budget), and shall **not be varied to their disadvantage** during their respective terms of office.

I. Simple Explanation

Article 149 guarantees the financial independence of the President and Deputy President during their term.

1. **Charge on Consolidated Fund:** Their pay is secured by being a **direct charge** on the national budget, meaning it does not require an annual vote in Parliament, protecting their financial certainty.
2. **No Disadvantage:** Their pay and benefits **cannot be reduced** (varied to their disadvantage) during their term of office. This protects them from political blackmail or manipulation by Parliament seeking to cut their pay.

II. Citizen's Right & Personal Impact

- **Protection of Independence:** This ensures that the President and Deputy President are not financially dependent on any external body and cannot be pressured by political or financial means while executing their duties.
- **Clarity of Funding:** You know that their salaries and benefits are paid directly from the nation's primary account, the Consolidated Fund.

III. Real-World Example

- **Scenario:** Due to an economic recession, Parliament attempts to pass a law cutting the salaries of all public servants, including the President and Deputy President, by 10%.
- **Action based on Article 149:** The President and Deputy President's salaries **cannot legally be reduced** during their term of office, even if other public officers' salaries are.
- **Result:** This legal shield ensures that the Executive's decision-making is not influenced by the threat of personal financial loss.

Article 150: Cabinet Secretaries

150. (1) Cabinet Secretaries are **responsible for the direction and control of the government ministries and departments**.

(2) Cabinet Secretaries shall be **accountable to the President** for the exercise of their powers and performance of their functions.

(3) A Cabinet Secretary may resign by tendering a written resignation to the President.

(4) The President may **dismiss** a Cabinet Secretary.

I. Simple Explanation

Article 150 defines the role and accountability of **Cabinet Secretaries (CSs)**, who are the political heads of the various government ministries.

1. **Core Role:** CSs are responsible for the **direction and control** of their respective ministries (Clause 1).
2. **Accountability:** CSs are primarily **accountable to the President** (Clause 2), who appointed them.
3. **Removal:** The President has the unilateral power to **dismiss** a Cabinet Secretary at will (Clause 4).

II. Citizen's Right & Personal Impact

- **Clear Chain of Command:** You know that the CS is the person ultimately in charge of a ministry (e.g., Health, Education, Roads) and the person you should hold accountable for policy outcomes.
- **Presidential Responsibility:** The accountability to the President (Clause 2) ensures that the President is ultimately responsible for the actions of the entire Cabinet.

III. Real-World Example

- **Scenario:** A CS is accused of poor performance and mismanagement in their ministry.

- **Action based on Article 150(4):** The President, believing the CS has lost confidence, can **dismiss** the Cabinet Secretary immediately without requiring parliamentary approval.
- **Result:** This ensures Executive efficiency, allowing the President to reorganize the Cabinet quickly to improve service delivery.

Article 151: Secretary to the Cabinet

151. (1) There shall be a **Secretary to the Cabinet** who shall be—

(a) **nominated and appointed by the President** with the approval of the National Assembly; and

(b) the **head of the Public Service**.

(2) The Secretary to the Cabinet shall—

(a) **keep the minutes of the Cabinet;**

(b) **convey the decisions of the Cabinet** to the appropriate persons; and

(c) perform other functions as directed by the Cabinet.

I. Simple Explanation

Article 151 creates the office of the **Secretary to the Cabinet**, who acts as the chief administrator and principal link between the President, the Cabinet, and the civil service.

1. **Appointment:** Appointed by the President with **National Assembly approval** (Clause 1a).
2. **Dual Role (Clause 1b):** The Secretary is often designated the **head of the Public Service** (the civil service bureaucracy).
3. **Functions:** Their key roles are administrative: **keeping the minutes** of Cabinet meetings and officially **conveying Cabinet decisions** (Clause 2).

II. Citizen's Right & Personal Impact

- **Right to Orderly Government:** This ensures that the most important government decisions are properly recorded and communicated clearly, preventing policy confusion.
- **Accountability:** The Secretary's role in conveying decisions ensures that when a ministry acts, it is acting based on a verified Cabinet decision.

III. Real-World Example

- **Scenario:** A ministry claims a new policy was approved by the Cabinet, but the Secretary to the Cabinet has no record of the decision.
- **Action based on Article 151(2)(a):** The claim can be invalidated, as the Secretary to the Cabinet is the official custodian of **Cabinet minutes**.

- **Result:** This article provides a clear, official record-keeping standard for the highest level of executive decision-making.

Here is the breakdown for **Article 152: Attorney-General**, which is the first article in **Part 3 of Chapter Nine: Other Offices** and defines the chief legal advisor to the National Government.

Article 152: Attorney-General

152. (1) There is established the office of **Attorney-General**.

(2) The Attorney-General shall be **nominated and appointed by the President**, with the **approval of the National Assembly**.

(3) The Attorney-General is the **principal legal adviser to the National Government**.

(4) The Attorney-General shall, subject to this Constitution, have authority to represent the National Government in **court or in any other legal proceedings**.

(5) The Attorney-General shall perform any other functions of an advocate, including as requested by the President.

(6) The Attorney-General shall **not hold office for more than one term** of seven years.

I. Simple Explanation

Article 152 creates the office of the **Attorney-General (AG)**, who is the top legal officer and lawyer for the entire National Government.

1. **Appointment:** The AG is appointed by the **President** but requires the mandatory **approval of the National Assembly** (linking to Article 132), providing a check on the Executive.
2. **Chief Legal Adviser:** The AG's primary role is to give **legal advice** to the President, the Cabinet, and all government ministries.
3. **Government Lawyer:** The AG is the official legal representative for the National Government in **all court cases** and legal proceedings.
4. **Term Limit:** The AG serves a single, fixed term of **seven years** and cannot be re-appointed. This is designed to ensure independence and minimize political influence.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Sound Government Advice	This ensures that government policies and decisions are based on accurate legal interpretation, reducing the risk of illegal policies that may violate your rights.
Check on Appointments	You have the right to demand that the National Assembly thoroughly scrutinizes the President's nominee for AG to ensure they are qualified and have high integrity.
Accountability in Court	When you sue the government, the AG is the official lawyer representing the State, ensuring there is a clear and accountable legal respondent.

III. Real-World Example

- **Scenario:** The Ministry of Transport wishes to sign a complex loan agreement with a foreign country to finance a major railway project.
- **Action based on Article 152(3):** The Ministry must seek and act on the advice of the **Attorney-General** to ensure the loan agreement is legally sound, constitutional, and does not expose the Republic to unacceptable risks.
- **Result:** The AG's legal opinion guides the Executive, and the AG later represents the government in any court challenges arising from the loan, affirming the office's core function as the government's chief legal guardian.

Article 153: Director of Public Prosecutions

153. (1) There is established the office of **Director of Public Prosecutions (DPP)**.

(2) The DPP shall be **nominated and appointed by the President** with the **approval of the National Assembly**.

(3) The DPP shall have the power to direct the Inspector-General of the National Police Service to **investigate any information** of a criminal nature.

(4) The DPP shall exercise State powers of **prosecution** and may—

(a) institute and undertake criminal proceedings against any person;

(b) take over and continue any criminal proceedings instituted by any other person or authority; and

(c) subject to clause (5), **discontinue at any stage** before judgment is delivered, any criminal proceedings instituted by the DPP.

(5) The DPP shall not require the consent of any person or authority for the commencement of criminal proceedings and, in the exercise of these powers, shall **not be under the direction or control of any person or authority**.

I. Simple Explanation

Article 153 creates the **Director of Public Prosecutions (DPP)** as the independent head of the prosecution authority responsible for all criminal cases in Kenya.

1. **Independence (Clause 5):** The DPP is constitutionally shielded. When prosecuting, the DPP is **not under the direction or control of any person or authority** (including the President or the AG). This guarantees the independence of the criminal justice system.
2. **Powers (Clause 4):** The DPP is the State's lawyer in criminal matters. They can **start and undertake** criminal cases, **take over** private prosecutions, and **discontinue** a case before judgment (a *nolle prosequi*).
3. **Investigative Power (Clause 3):** The DPP can direct the police (Inspector-General) to **investigate** a crime, ensuring police investigations are guided by the prosecutor's legal requirements.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Independent Justice	This ensures that criminal prosecution is free from political interference. The DPP can charge anyone, regardless of their political or social status, and cannot be ordered by the President or any politician to drop a case.
Right to Speedy Justice	The DPP's power to discontinue a case (Clause 4c) ensures that cases lacking sufficient evidence or serving no public interest can be stopped quickly, freeing up judicial time.
Check on Police Power	The DPP's power to direct the police on investigations provides a necessary check, ensuring that police actions are focused on legally sound evidence gathering.

III. Real-World Example

- **Scenario:** The police arrest a former Cabinet Secretary (CS) for corruption and recommend they be charged. The CS's former political colleagues pressure the DPP to drop the case.
- **Action based on Article 153(5):** The DPP's office issues a statement affirming its independence. The DPP's power to institute criminal proceedings is **not under the direction or control of any person or authority**.
- **Result:** The DPP proceeds with the prosecution, confirming that the independence of the office is a constitutional defence against political influence in the criminal justice system.

Article 154: County Attorneys

154. (1) There shall be a **County Attorney** for each county government.

(2) The County Attorney shall be nominated, and with the approval of the **County Assembly**, appointed by the **County Governor**.

(3) The County Attorney is the **chief legal adviser** to the county government.

(4) The County Attorney shall represent the county government in **court or in any other legal proceedings**.

I. Simple Explanation

Article 154 mirrors the role of the national Attorney-General at the devolved level, creating the office of the **County Attorney**.

1. **Appointment:** The County Attorney is appointed by the **County Governor** but requires the approval of the **County Assembly** (the local check).
2. **Core Role:** The County Attorney is the **chief legal adviser** to the County Governor and the County Executive Committee.
3. **County Lawyer:** The County Attorney is the official lawyer representing the County Government in all **court or legal proceedings** concerning devolved functions (e.g., local revenue, land use).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Legally Sound Local Policy	This ensures that your County Government receives and acts on sound legal advice before making policy or passing county laws, reducing the risk of illegal actions or unnecessary lawsuits.
Check on Local Appointments	You can lobby your Ward Representative (MCA) to scrutinize the Governor's nominee for County Attorney to ensure they are qualified and have high integrity.

III. Real-World Example

- **Scenario:** The County Executive Committee wants to pass a new by-law imposing a steep fee on all external transport vehicles entering the county.
- **Action based on Article 154(3):** The County Executive must seek the legal opinion of the **County Attorney**. The County Attorney advises whether the by-law is constitutional and within the County's mandate (Fourth Schedule).
- **Result:** If the County Attorney advises that the fee is unconstitutional (as it violates freedom of movement, Article 39), the County Executive must revise the by-law, ensuring that local policy complies with the national law.

Article 155: Secretaries, other offices and staff

155. (1) There are established the offices of **Principal Secretaries** in the civil service.

(2) The President shall **nominate and appoint** Principal Secretaries with the **approval of the National Assembly**.

(3) A Principal Secretary shall be the **chief accounting officer** in the respective State Department.

(4) The President may appoint other offices in the public service and dismiss appointed officers.

I. Simple Explanation

Article 155 creates the office of the **Principal Secretary (PS)**, the most senior non-political civil servant in a ministry, responsible for its finances and administration.

1. **Appointment:** PSs are nominated and appointed by the **President**, subject to the mandatory **approval of the National Assembly**.
2. **Accounting Officer:** The PS is the **chief accounting officer** for their State Department. This means they are personally responsible for managing and accounting for all public funds allocated to that department.
3. **Removal:** The President retains the power to **appoint and dismiss** other appointed public officers.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability of Funds	If there is a corruption scandal in a ministry involving misuse of funds, the Principal Secretary is the person constitutionally responsible and must appear before Parliament's committees to account for the money.
Check on Appointments	The requirement for National Assembly approval ensures that the person who handles billions of shillings (the PS) is vetted for integrity and competence by elected representatives.

III. Real-World Example

- **Scenario:** The Public Accounts Committee (PAC) discovers that Ksh 5 billion allocated for hospital equipment has gone missing from the Ministry of Health.
- **Action based on Article 155(3):** The **Principal Secretary** in charge of health services is summoned. They are questioned not just as a manager but as the **chief accounting officer**, who bears personal responsibility for the use of those funds.
- **Result:** The PAC, using this article, recommends disciplinary or legal action against the PS for failure to account for public money, reinforcing the non-partisan responsibility for fiscal management.

Article 156: Terms of office of the Attorney-General and the Director of Public Prosecutions

156. (1) The Attorney-General may be **removed from office** by the President only for **just cause** and in accordance with the procedure set out in Article 156(3) and (4).

(2) The DPP may be **removed from office** by the President only for **just cause** and in accordance with the procedure set out in Article 156(3) and (4).

(3) The procedure for removal is initiated by a petition to the National Assembly. If the petition is supported by the Assembly, the President shall suspend the officer and appoint a **tribunal** to investigate the matter.

(4) The tribunal shall report its findings and the President shall act in accordance with the recommendations of the tribunal.

I. Simple Explanation

Article 156 provides a high level of **tenure security** for the Attorney-General and the Director of Public Prosecutions (DPP), ensuring they cannot be fired arbitrarily by the President.

1. **Protection:** Both the AG and the DPP can only be removed for **just cause** (e.g., gross misconduct, violation of the Constitution, or inability to perform functions).
2. **Removal Process (Clause 3 & 4):** The removal process is complex and non-political:
 - **Initiation:** Requires a petition supported by the **National Assembly**.
 - **Investigation:** The President must suspend the officer and appoint an **independent tribunal** to investigate the allegations.
 - **President Must Comply:** The President must follow the **recommendations of the tribunal** (e.g., if the tribunal says "No misconduct," the officer must be reinstated).

II. Citizen's Right & Personal Impact

- **Right to Independent Legal Advice:** This ensures that the AG gives objective legal advice and the DPP makes impartial prosecution decisions without fear of political retaliation by the President.
- **Rule of Law:** The process ensures that the removal of these critical legal officers is based on the **findings of an independent tribunal**, not the political will of the Executive.

III. Real-World Example

- **Scenario:** The President wishes to remove the DPP because the DPP is prosecuting a senior political ally of the President.
- **Action based on Article 156:** The President **cannot** simply dismiss the DPP. A petition must be sent to the National Assembly. Even if the Assembly supports it, the decision rests with the findings of the **tribunal** (Clause 3 and 4).
- **Result:** This high threshold protects the independence of the office, affirming that the rule of law prevails over political convenience.

Article 157: Solicitor-General

157. (1) There shall be a **Solicitor-General** who shall be **nominated and appointed by the President** with the **approval of the National Assembly**.

(2) The Solicitor-General is the **principal assistant to the Attorney-General**.

(3) The Solicitor-General shall—

(a) **perform the duties of the Attorney-General** if the Attorney-General is absent or incapacitated; and

(b) perform any other functions as the Attorney-General may direct.

(4) The Solicitor-General shall be an **ex officio member** of the National Executive and the Cabinet.

I. Simple Explanation

Article 157 establishes the **Solicitor-General** as the chief deputy and administrative head of the Attorney-General's office.

1. **Appointment:** Appointed by the **President** with **National Assembly approval**.
2. **Core Role:** The Solicitor-General is the **principal assistant to the Attorney-General** and acts as the AG in their absence.
3. **Ex Officio Member:** The Solicitor-General is an *ex officio* member of the Cabinet, ensuring continuity and legal presence in the highest executive meetings.

II. Citizen's Right & Personal Impact

- **Continuity of Legal Service:** This ensures that the National Government always has senior legal advice, even if the AG is unavailable.
- **Administrative Clarity:** The Solicitor-General manages the AG's office, ensuring the smooth flow of legal advice and representation.

III. Real-World Example

- **Scenario:** The Attorney-General is traveling internationally for two weeks. During that time, the President requires an urgent legal opinion on a security matter.
- **Action based on Article 157(3)(a):** The **Solicitor-General** automatically steps in and **performs the duties of the Attorney-General**, providing the official legal advice.
- **Result:** This constitutional office ensures the uninterrupted flow of legal service to the government.

Article 158: Terms of office of the Solicitor-General

158. (1) The Solicitor-General shall **not hold office for more than one term** of seven years.

(2) The Solicitor-General may be **removed from office** by the President only for **just cause** and in accordance with the procedure set out in Article 156(3) and (4).

I. Simple Explanation

Article 158 provides the term limit and security of tenure for the **Solicitor-General**.

1. **Term Limit (Clause 1):** The Solicitor-General serves a fixed term of **seven years** and cannot be re-appointed.
2. **Security of Tenure (Clause 2):** The Solicitor-General can only be removed for **just cause** through the same independent **tribunal** process used for the AG and the DPP (Article 156).

II. Citizen's Right & Personal Impact

- **Independent Tenure:** This tenure security ensures the Solicitor-General provides honest and objective legal advice, knowing they cannot be easily fired by the President for political reasons.
- **Clarity of Service:** The seven-year term provides stability and a fixed end date for the term of the office holder.

III. Real-World Example

- **Scenario:** The Solicitor-General advises against a major policy move by the Executive. The Cabinet Secretary wants the President to fire the SG.
- **Action based on Article 158(2):** The President **cannot** fire the SG without initiating the complex process involving the National Assembly and an independent tribunal.
- **Result:** This protection ensures that the SG's legal advice is free from political intimidation.



“You cannot rig the will of the people”. – Raila Odinga

Chapter Ten: The Judiciary

Here is the breakdown for **Article 159: Judicial authority**, which defines the source and principles governing the court system in Kenya. This is the first article in **Chapter Ten: The Judiciary**.

Article 159: Judicial Authority

159. (1) Judicial authority is derived from the **people of Kenya** and vests in, and shall be exercised by, the **courts and tribunals** established by or under this Constitution.¹²

(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—³⁴

(a) **justice shall be done to all**, irrespective of status;⁵⁶

(b) justice shall **not be delay⁷ed**;⁸

(c) **alternative forms of dispute resolution** including⁹ reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to this Constitution;

(d) **justice shall be administered without undue regard to procedural technicalities**; and

(e) the purpose and principles of this Constitution shall be **protected and promoted**.

I. Simple Explanation

Article 159 establishes the **Judiciary** as an independent and sovereign arm of government, detailing the source of its power and the five core principles that must guide all judges and tribunals.

1. **Source of Power (Clause 1):** The power to interpret and apply the law comes from the **people** but is exercised exclusively by the courts and tribunals. This ensures the Judiciary's legitimacy and independence from the Executive and Legislature.
2. **Guiding Principles (Clause 2):** All judges and magistrates must adhere to these rules:
 - **Equality:** Everyone is treated equally, **irrespective of status** (rich or poor, powerful or weak).
 - **Timeliness:** Justice must **not be delayed** (the basis for demanding speedy trials).
 - **Alternative Resolution:** Courts must **promote** and encourage methods like **mediation** and **arbitration** before or alongside formal litigation.
 - **Substance over Procedure:** Courts should focus on the truth and substance of a case and **not be overly bogged down by technical legal procedures**.
 - **Constitutionalism:** The Judiciary's role is to **protect and promote** the overall purpose and principles of the Constitution.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Impartial Justice	This is your guarantee that no judge can deny you justice based on your social status, wealth, or political affiliation. Justice must be blind.
Right to Speedy Resolution	If your case is delayed indefinitely, you can challenge the court's actions by citing the principle that justice shall not be delayed .
Protection from Technicalities	If a lawyer makes a minor error in paperwork, the court is constitutionally required to focus on the merits of your case rather than dismissing it on a technicality.

III. Real-World Example

- **Scenario:** A family has a property dispute that has been stuck in court for five years due to numerous procedural delays filed by the opposing lawyer.
- **Action based on Article 159(2)(b) and (d):** The family files an application demanding that the court proceed with the hearing, arguing that the court is violating the constitutional principles that **justice shall not be delayed** and that the process shall avoid **procedural technicalities**.
- **Result:** The judge is constitutionally compelled to reject the delaying tactics and issue a firm hearing date, affirming that the Constitution prioritizes the timely and efficient delivery of justice over technical manoeuvring.

Article 160: Independence of the Judiciary

160. (1) The Judiciary is **subject only to this Constitution and the law** and is **not subject to the control or direction of any person or authority**.

(2) The office and functions of a judge shall not be abolished while there is a substantive holder of that office.

(3) The **remuneration and benefits payable to a judge shall be a charge on the Consolidated Fund** and shall **not be varied to the disadvantage** of the judge.

(4) A member of the Judiciary is **not liable in an action or suit** for anything done or omitted to be done in good faith in the exercise of a judicial function.

I. Simple Explanation

Article 160 provides the explicit constitutional guarantee of **independence** for the Judiciary, shielding judges and magistrates from political or financial manipulation.

1. **Absolute Independence (Clause 1):** The Judiciary's decisions are subject only to the Constitution and the law; it is **not subject to the direction of the President, Parliament, or any person**.
2. **Financial Security (Clause 3):** Judges' salaries are a **charge on the Consolidated Fund** (meaning they are paid automatically) and **cannot be reduced** during their term of office. This protects them from financial blackmail by the Legislature or Executive.

3. **Security of Office (Clause 2):** A judge's position cannot be abolished while they are serving, ensuring **job security**.
4. **Judicial Immunity (Clause 4):** A judge is protected from being personally sued for decisions made in **good faith** while performing their judicial function, allowing them to rule without fear of retribution.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Unbiased Decisions	This is your guarantee that the judge presiding over your case cannot be fired, demoted, or have their pay cut because they ruled against the government or a powerful politician.
Protection of the Rule of Law	This shield allows judges to enforce the Constitution and protect human rights without fear of legal or political pressure from powerful State organs.

III. Real-World Example

- **Scenario:** A judge issues an order halting a major government infrastructure project because the Executive failed to follow environmental laws. The Executive is furious and attempts to reduce the judge's travel allowances.
- **Action based on Article 160(3):** The judge challenges the attempt. The Constitution guarantees that the judge's remuneration shall **not be varied to their disadvantage** during their term.
- **Result:** The attempt to punish the judge financially fails. This constitutional financial shield is vital for maintaining the separation of powers and the judge's ability to hold the Executive accountable.

Article 161: Status of Judges and Magistrates

161. (1) The Judiciary consists of the **judges of the superior courts**, the **magistrates**, and other **judicial officers**.

(2) The Chief Justice and the Deputy Chief Justice are the **head and deputy head of the Judiciary** respectively.

I. Simple Explanation

Article 161 provides a simple definition of the entire judicial structure and identifies its two most senior officers.

1. **The Judiciary's Members (Clause 1):** The Judiciary comprises:
 - **Superior Courts Judges:** Judges of the Supreme Court, Court of Appeal, High Court, and specialized superior courts.
 - **Magistrates and Others:** Magistrates and other judicial officers (like registrars) who staff the subordinate courts.
2. **Judiciary Leadership (Clause 2):** The **Chief Justice** is the head of the entire Judiciary and the court system, and the **Deputy Chief Justice** is the deputy head.

II. Citizen's Right & Personal Impact

- **Clarity of Structure:** This article provides a clear hierarchy, ensuring that when you deal with a magistrate, a High Court Judge, or the Chief Justice, you know their respective place within the overall court system.
- **Unified System:** It confirms that magistrates (who handle the majority of citizens' daily cases) are constitutionally part of the independent Judiciary.

III. Real-World Example

- **Scenario:** The Chief Justice issues a directive regarding court efficiency and case backlog management.
- **Action based on Article 161(2):** All judges, magistrates, and judicial officers across the country must comply, as the Chief Justice is the constitutionally recognized **head of the Judiciary**.
- **Result:** This centralization of leadership ensures uniformity and efficiency in the administration of justice nationwide.

Article 162: The Superior Courts

162. (1) The superior courts are the **Supreme Court, the Court of Appeal, the High Court,** and the courts mentioned in clause (2).¹⁰¹¹¹²

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to¹³—¹⁴¹⁵

(a) employment and labour relations; and¹⁶¹⁷

(b) the environment and the use and occupation of, and title to, land.¹⁹

(3) Parliament shall determine the **jurisdiction and functions** of the court²⁰s established under clause (2).

I. Simple Explanation

Article 162 defines the **Superior Courts**—the highest level of the judicial system—and mandates the creation of specialized High Courts.

1. **Constitutional Superior Courts (Clause 1):** The three main superior courts are the **Supreme Court, the Court of Appeal, and the High Court.**
2. **Specialized Superior Courts (Clause 2):** Parliament is commanded to create two specialized courts that have the same status as the High Court:
 - **Employment and Labour Relations Court (ELRC):** Deals with all disputes between employers and employees, including trade union and industrial disputes.
 - **Environment and Land Court (ELC):** Deals with all disputes related to property, land ownership, land use, and environmental issues.
3. **Jurisdiction (Clause 3):** Parliament must pass laws detailing the specific legal areas (**jurisdiction**) these specialized courts handle.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Specialized Justice	This ensures that when your rights under Article 41 (Labour) or Article 40 (Property) are violated, your case is heard by a specialized judge who understands the complex, technical area of law involved, leading to better, faster decisions.
Clear Path for Appeals	Since these are Superior Courts, appeals from them go directly to the Court of Appeal.

III. Real-World Example

- **Scenario:** A factory worker is unfairly dismissed and sues the company for wrongful termination.
- **Action based on Article 162(2)(a):** The worker files the case directly at the **Employment and Labour Relations Court (ELRC)**.
- **Result:** This ensures the dispute is handled by a specialized judge with expertise in employment law, providing justice consistent with the constitutional right to fair labour practices.

Article 163: The Supreme Court

163. (1) There is established the **Supreme Court**, which shall consist of—

- (a) the **Chief Justice**, who shall be the President of the Court;
- (b) the **Deputy Chief Justice**, who shall be the Vice-President of the Court; and
- (c) **five other judges**.

(2) The Supreme Court is properly constituted for the purposes of its proceedings if it is composed of **five judges**.

(3) The Supreme Court has **exclusive original jurisdiction** to hear and determine disputes relating to the **elections to the office of President**.

(4) The Supreme Court has **appellate jurisdiction** to hear and determine appeals from—

- (a) the **Court of Appeal**; and
- (b) any other court or tribunal as prescribed by national legislation.

(6) The Supreme Court may give an **advisory opinion** at the request of the national government, any State organ, or any county government.

I. Simple Explanation

Article 163 establishes the **Supreme Court** as the final court of appeal and the ultimate constitutional authority in the country.

1. **Composition:** The Supreme Court consists of the **Chief Justice**, the **Deputy Chief Justice**, and **five other judges** (total of 7 judges). A minimum of **five judges** must sit to hear a case (**quorum**).
2. **Exclusive Jurisdiction (Clause 3):** Its most powerful role is its **exclusive** (sole) power to hear challenges to a **Presidential election**. No other court can hear this.
3. **Final Appeal (Clause 4):** It is the final court of appeal, hearing cases that originate from the **Court of Appeal** (e.g., final appeals on major constitutional issues).
4. **Advisory Role (Clause 6):** The Court can issue an **advisory opinion** on complex legal matters (e.g., devolution disputes) when requested by the national or county government, acting as a constitutional guide.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Final Justice	If your constitutional rights case is rejected by the High Court and Court of Appeal, the Supreme Court is your last legal option.
Protection of Democracy	The exclusive mandate to handle Presidential petitions ensures that the transfer of power is ultimately overseen by the most senior, impartial, and expert judicial body.
Clarity on Constitutional Issues	The Supreme Court's decisions set binding precedent for all lower courts on constitutional interpretation, bringing legal certainty to matters of national importance.

III. Real-World Example

- **Scenario:** The Senate and the National Assembly disagree fundamentally on the meaning of a constitutional provision regarding the sharing of national resources.
- **Action based on Article 163(6):** The National Government, acting on behalf of the conflicting Houses, requests the Supreme Court to issue an **advisory opinion**.
- **Result:** The Supreme Court issues a definitive interpretation of the constitutional clause, which is then legally binding on both the National Assembly and the Senate, resolving the political impasse through legal guidance.

Article 164: The Court of Appeal

164. (1) The **Court of Appeal** is established and shall consist of **not fewer than twelve judges**.

(3) The Court of Appeal has jurisdiction to hear appeals from—

(a) the **High Court**; and

(b) any other court or tribunal as prescribed by an Act of Parliament.

I. Simple Explanation

Article 164 establishes the **Court of Appeal** as the intermediate superior court, primarily responsible for hearing appeals from the High Court and the specialized Superior Courts.

1. **Composition:** It must consist of **not fewer than twelve judges**.
2. **Appellate Jurisdiction:** The Court of Appeal handles nearly all legal appeals from the **High Court** (e.g., appeals on constitutional petitions, criminal convictions, or major civil suits) and the **Environment and Land Court** and the **Employment and Labour Relations Court**.

II. Citizen's Right & Personal Impact

- **Right to Second Review:** If you lose a case in the High Court, the Court of Appeal provides your first automatic right to have your case and the judge's decision reviewed by a panel of senior judges.
- **Filter for the Supreme Court:** The Court of Appeal resolves the vast majority of disputes, ensuring that only the most complex and constitutionally significant cases proceed to the Supreme Court.

III. Real-World Example

- **Scenario:** A person is convicted of murder and sentenced to life imprisonment by the High Court.
- **Action based on Article 164(3)(a):** The convicted person appeals the decision to the **Court of Appeal**.
- **Result:** The Court of Appeal reviews the evidence and the procedure of the High Court trial. It may either affirm the conviction, acquit the accused, or order a retrial, exercising its power as the primary appellate court.

Article 165: The High Court

165. (1) The **High Court** is established.

(3) Subject to clause (5), the High Court has—

(a) **unlimited original jurisdiction** in criminal and civil matters;²¹

(b) jurisdiction to determine the question whether a **right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threaten²²ed**;

(d) jurisdiction to hear any question respecting the **interpretation of this Constitution**;

(f) jurisdiction to hear **appeals** from a tribunal or subordinate court.

(5) The High Court **does not have jurisdiction** in respect of matters—

(a) reserved for the **Supreme Court** (i.e., Presidential election petitions); or

(b) falling within the jurisdiction of the courts contemplated in Article 162(2) (i.e., **Environment and Labour Courts**).

I. Simple Explanation

Article 165 establishes the **High Court** as the court of first instance for serious matters and the primary constitutional court for protecting human rights.

1. **Unlimited Jurisdiction (Clause 3a):** The High Court hears all serious civil and criminal cases (like murder trials) that are not reserved for lower courts.
2. **Constitutional Court (Clause 3b & d):** This is its most crucial role: it has the power to hear all petitions claiming a violation of the **Bill of Rights** and to rule on any question concerning the **interpretation of the Constitution**.
3. **Appellate/Review Jurisdiction (Clause 3f):** It hears appeals from magistrates' courts and tribunals.
4. **Exclusions (Clause 5):** It cannot hear cases reserved for the Supreme Court (Presidential election petitions) or the specialized superior courts (land/labour matters).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to a Constitutional Forum	If your fundamental rights (e.g., freedom of expression, fair administrative action) are violated by the government, you have the right to file a petition directly with the High Court.
Primary Court for Serious Cases	If you are charged with a serious felony or involved in a complex civil dispute, your case starts at the High Court.

III. Real-World Example

- **Scenario:** A human rights activist is illegally detained by the police, violating their right to liberty (Article 49).
- **Action based on Article 165(3)(b):** The activist's lawyer files a **constitutional petition** (or a **Habeas Corpus** application) directly at the **High Court**, which has the jurisdiction to determine whether the **right or fundamental freedom** has been violated.
- **Result:** The High Court orders the police to produce the activist and, if the detention is found to be illegal, orders their immediate release.

Article 166: Appointment of Chief Justice, Deputy Chief Justice and Judges

166. (1) The President shall appoint—

(a) the **Chief Justice** and the **Deputy Chief Justice**, in accordance with the recommendation of the **Judicial Service Commission (JSC)**; and

(b) **all other judges**, in accordance with the recommendation of the **JSC**.

(2) The appointment of the Chief Justice and Deputy Chief Justice shall be subject to the **approval of the National Assembly**.

(3) The Chief Justice and Deputy Chief Justice shall hold office for a non-renewable term of **ten years**.

I. Simple Explanation

Article 166 sets the procedure and tenure for appointing the most senior members of the Judiciary, ensuring political accountability and judicial independence.

1. **JSC Role (Clause 1):** All judges (including the CJ and DCJ) are selected and **recommended** by the **Judicial Service Commission (JSC)**, an independent body (Article 171). The President cannot choose a judge whom the JSC has not recommended.
2. **Political Approval (Clause 2):** The President formally appoints the judges, but the appointments of the **Chief Justice and Deputy Chief Justice** require the mandatory **approval of the National Assembly** (Parliamentary check).
3. **Tenure:** The CJ and DCJ serve a fixed, non-renewable term of **ten years** (or until retirement age, whichever comes first).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Merit-Based Judges	The JSC's central role ensures that judges are selected based on merit, integrity, and competence , not political patronage.
Check on Presidential Power	The President's power to appoint judges is restricted by the JSC's recommendation and Parliament's approval, preventing the Executive from stacking the court with political allies.

III. Real-World Example

- **Scenario:** The JSC recommends a candidate for Chief Justice to the President.
- **Action based on Article 166(2):** The President submits the name to the **National Assembly**. The relevant committee vets the candidate and conducts public hearings before recommending either approval or rejection to the full Assembly.
- **Result:** This dual oversight ensures that the highest office in the Judiciary is subject to scrutiny by both the judicial appointment body (JSC) and the people's representatives (National Assembly).

Article 167: Tenure of Office of Judicial Officers

167. (1) A judge shall **retire** from office on attaining the age of **seventy years**, but may retire earlier after attaining the age of sixty-five years.

(2) The Chief Justice and the Deputy Chief Justice shall hold office for a non-renewable term of **ten years** or until attaining the age of seventy years, whichever is earlier.

(3) A judge may be removed from office only on the grounds set out in Article 168.

I. Simple Explanation

Article 167 sets the mandatory retirement age and term limits for all judges, ensuring renewal and efficiency in the Judiciary.

1. **Retirement Age:** All judges must retire at the age of **70 years** (Clause 1).
2. **CJ/DCJ Term:** The top two judicial officers serve a non-renewable term of **10 years** (or until 70 years old, whichever comes first) (Clause 2).
3. **Security of Tenure:** A judge cannot be fired except through the specific, protected grounds and procedure set out in **Article 168** (Clause 3).

II. Citizen's Right & Personal Impact

- **Predictability:** The fixed retirement age ensures that the Judiciary is continuously refreshed with new talent and ideas.
- **Security of Office:** The fixed tenure protects judges from being intimidated or blackmailed into premature retirement.

III. Real-World Example

- **Scenario:** A Supreme Court Judge reaches their 70th birthday.
- **Action based on Article 167(1):** The Judge must automatically **retire** from office.
- **Result:** This ensures that judicial decisions are made by judges who are deemed fit and capable, consistent with the principle of judicial efficiency.

Article 168: Removal of a Judge

168. (1) A judge may be removed from office only on the following grounds—

- (a) inability to perform the functions of office **arising from mental or physical incapacity;**
- (b) a **breach of a code of conduct** prescribed for judges;
- (c) **bankruptcy;**
- (d) **incompetence;** or
- (e) **gross misconduct or misbehaviour.**

(2) A person desiring the removal of a judge may submit a petition to the **Judicial Service Commission (JSC).**

(4) If the JSC is satisfied that the petition discloses a ground for removal, it shall send the petition to the **President**, who shall **suspend the judge** and appoint a **tribunal** to investigate the matter.

(7) The President shall act in accordance with the **recommendations of the tribunal.**

I. Simple Explanation

Article 168 sets the high, protected threshold and procedure for the **removal of any judge**, ensuring that removal is based on objective evidence of failure or misconduct, not political vengeance.

1. **Strict Grounds (Clause 1):** A judge can only be fired for one of five reasons: incapacity, code of conduct breach, bankruptcy, **incompetence**, or **gross misconduct**.
2. **Initiation and Vetting (Clause 2 & 4):** The process starts with a petition to the **JSC**. The JSC acts as the gatekeeper, vetting the complaint before passing it to the President. If the JSC finds merit, the President must **suspend the judge** and appoint a **tribunal** for investigation.
3. **Binding Decision (Clause 7):** The President **must** follow the **recommendation of the tribunal** (e.g., if the tribunal recommends removal, the President must remove the judge; if not, the judge must be reinstated).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability	If a judge is corrupt or grossly incompetent, you have a constitutional right to file a petition with the JSC to initiate their removal.
Protection of Independence	The involvement of the JSC and the Tribunal ensures that the President cannot unilaterally fire a judge who rules against them, thus protecting the rule of law.

III. Real-World Example

- **Scenario:** A judge is consistently late for court and has a track record of issuing contradictory rulings, leading to complaints of **incompetence** (Clause 1d).
- **Action based on Article 168(2):** A complainant files a petition with the **JSC**. The JSC investigates the conduct. If they find sufficient grounds, they recommend the appointment of a tribunal by the President.
- **Result:** The Tribunal conducts a formal hearing. If they find **incompetence**, the President must remove the judge, upholding the principle of judicial competence.

Article 169: Subordinate Courts

169. (1) The subordinate courts are—

- (a) the **Magistrates courts**;
- (b) the **Kadhis' courts**;
- (c) the courts established by **Parliament** (e.g., the Courts Martial); and
- (d) any other court or tribunal that **is subordinate to the High Court**.

(2) Parliament shall enact legislation conferring **jurisdiction, functions and powers** on the courts established under clause (1).

I. Simple Explanation

Article 169 defines the **Subordinate Courts**—the lower level of the judicial system that handles the vast majority of citizens' daily legal matters.

1. **Constitutional Subordinate Courts:** These include the **Magistrates Courts** (handling most civil and criminal cases), **Kadhis' Courts** (handling disputes on Muslim personal law), and any courts created by Parliament (Clause 1).
2. **Legislative Mandate:** Parliament is required to pass laws detailing the **jurisdiction, functions, and powers** of these courts (e.g., the maximum financial value of a case a magistrate can hear).

II. Citizen's Right & Personal Impact

- **Right to Local Justice:** Magistrates Courts are located across all counties, ensuring that justice is physically and financially accessible to most citizens for minor civil disputes and routine criminal cases.
- **Right to Specialized Cultural Justice:** The Kadhis' Courts ensure that Muslim citizens can resolve matters of marriage, divorce, and inheritance according to Sharia law, respecting the right to culture (Article 44).

III. Real-World Example

- **Scenario:** A landlord sues a tenant over Ksh 500,000 in unpaid rent.
- **Action based on Article 169(1)(a):** The case is filed in the local **Magistrates Court** because the value is within the court's jurisdiction (as defined by Parliament).
- **Result:** This ensures that higher courts are not burdened with small, routine cases.

Article 170: Kadhis' Courts

170. (1) There shall be a **Chief Kadhi** and such number of other Kadhis as may be necessary.

(2) The Kadhis' courts shall be established in any area of Kenya in which there is a **significant population of persons professing the Islamic religion**.

(3) The jurisdiction of a Kadhis' court shall be limited to the determination of questions of **Muslim law** relating to **personal status, marriage, divorce and inheritance** in proceedings in which all the parties profess the Islamic religion.

I. Simple Explanation

Article 170 formally establishes and defines the limited, specific jurisdiction of the **Kadhis' Courts**.

1. **Mandatory Establishment:** Kadhis' Courts must be set up in areas where there is a **significant Muslim population**.
2. **Limited Jurisdiction:** Their jurisdiction is strictly limited to matters of **Muslim personal law**, specifically **marriage, divorce, inheritance, and personal status**.

3. **Condition:** The court can only hear a case if **all parties** in the dispute are of the Islamic faith.

II. Citizen's Right & Personal Impact

- **Right to Cultural Justice:** This ensures that Muslim citizens have the constitutional right to have personal disputes resolved according to their religious laws and tradition, guaranteeing the right to culture (Article 44).
- **Clarity of Law:** The clear limits on jurisdiction ensure that Kadhis' Courts do not overstep their boundaries and rule on matters of criminal or constitutional law.

III. Real-World Example

- **Scenario:** A Muslim woman seeks a divorce from her husband based on the terms of her faith.
- **Action based on Article 170(3):** She files her petition at the local **Kadhis' Court**.
- **Result:** The court determines the matter using Muslim personal law, providing a constitutionally sanctioned, culturally relevant method for dispute resolution.

Article 171: Judicial Service Commission (JSC)

171. (1) The **Judicial Service Commission (JSC)** is established.

(2) The JSC shall consist of—

(a) the **Chief Justice**, as chairperson;

(b) the **Attorney-General**;

(c) a Supreme Court Judge, a Court of Appeal Judge, a High Court Judge, a Magistrate, a representative of the Public Service Commission;

(d) **two advocates** (one man, one woman) nominated by the Law Society of Kenya; and

(e) **two public representatives** (one man, one woman) appointed by the President with the approval of the National Assembly.

I. Simple Explanation

Article 171 establishes the **Judicial Service Commission (JSC)**, the highly independent body responsible for hiring, firing, and disciplining all judicial officers.

1. **Composition:** The JSC has a diverse membership, led by the **Chief Justice**, and includes representatives from the **Judiciary** (judges and magistrates), the **Executive** (AG), the **legal profession** (Law Society of Kenya), and the **public** (public representatives). This ensures political and professional balance.

II. Citizen's Right & Personal Impact

- **Right to Independent Oversight:** The JSC's balanced composition ensures that the hiring and firing of judges are handled independently, free from political pressure from the Executive or Legislature.
- **Right to Representation:** The inclusion of **public representatives** ensures that the views and expectations of the public are considered when decisions about judicial leadership are made.

III. Real-World Example

- **Scenario:** The JSC conducts interviews for a new High Court Judge position.
- **Action based on Article 171(2):** The panel is composed of the diverse members listed in this article, who jointly conduct interviews and score the candidates.
- **Result:** This ensures that the selection process is transparent and based on consensus among political, professional, and public representatives, upholding the merit principle.

Article 172: Functions of the Judicial Service Commission

172. (1) The Judicial Service Commission shall—

- (a)* **recommend persons for appointment as judges;**
- (b)* **review and make recommendations on the conditions of service** of judicial officers;
- (c)* **appoint, receive complaints against, investigate and remove** (or otherwise discipline) **magistrates, registrars, and other judicial officers;**
- (d)* prepare and implement programmes for the continuing education and training of judges and judicial officers; and
- (e)* advise the President on the removal of a judge (Article 168).

I. Simple Explanation

Article 172 defines the vast powers and responsibilities of the **JSC** over the Judiciary's personnel.

1. **Hiring and Firing Judges:** The JSC's most critical role is to **recommend persons for appointment as judges** (to the President) and initiate the **removal process for judges** (Article 168).
2. **Control over Lower Courts:** The JSC has the power to **appoint, investigate, and discipline all magistrates and registrars** (who staff the lower courts).
3. **Judicial Welfare:** The JSC sets the terms and conditions of service for all judicial officers and ensures they receive **continuing education and training**.

II. Citizen's Right & Personal Impact

- **Right to Quality Magistrates:** The JSC's disciplinary power over magistrates ensures that if a lower court officer engages in misconduct or incompetence, they can be swiftly investigated and punished.
- **Improved Judicial Service:** The mandate for training ensures that the courts are staffed by judges and magistrates whose legal knowledge and efficiency are continuously upgraded.

III. Real-World Example

- **Scenario:** A citizen files a complaint with the JSC alleging that a local magistrate solicited a bribe.
- **Action based on Article 172(1)(c):** The JSC initiates an investigation. If the complaint is proven, the JSC has the power to immediately **remove or otherwise discipline** the magistrate.
- **Result:** This constitutional mandate ensures that the JSC acts as the internal guardian of integrity for the entire court system.

Article 173: Appointment of Chief Registrar of the Judiciary and other staff

173. (1) There shall be a **Chief Registrar of the Judiciary** who shall be appointed by the **Judicial Service Commission (JSC)**.

(2) The Chief Registrar shall be the **chief administrative officer** of the Judiciary.

(3) The Chief Registrar shall exercise any powers and perform any duties and functions assigned to the office by the JSC.

I. Simple Explanation

Article 173 establishes the **Chief Registrar of the Judiciary (CRJ)** as the non-judicial head of the entire court system's administration.

1. **Appointment:** The CRJ is appointed and managed by the **JSC**.
2. **Administrative Head:** The CRJ is the **chief administrative officer**, responsible for managing all non-judicial staff, court budgets, buildings, and technology.

II. Citizen's Right & Personal Impact

- **Efficient Court Operation:** The CRJ ensures that court buildings are maintained, technology works, and the support staff is efficient, which directly affects how quickly your case proceeds.
- **Clear Accountability:** You know the individual responsible for the administrative efficiency of all courts nationwide.

III. Real-World Example

- **Scenario:** The Judiciary needs to roll out e-filing (online case submission) across the country.

- **Action based on Article 173(2):** The **Chief Registrar of the Judiciary** uses their power as the **chief administrative officer** to procure the technology, train staff, and implement the system nationwide.
- **Result:** This ensures that the Judiciary's operational modernization is driven by a constitutionally recognized administrative head.

Article 174: Funding of the Judiciary

174. (1) The **funding of the Judiciary** shall be a **charge on the Consolidated Fund** (the national budget).

(2) The **total amount** allocated to the Judiciary shall be **paid directly to the Judiciary** for its recurrent and development expenditure.

I. Simple Explanation

Article 174 guarantees the **financial independence** of the Judiciary, protecting it from being manipulated by the Executive through budgetary cuts or control.

1. **Charge on Consolidated Fund:** The Judiciary's funding is a **direct charge** on the national budget, not subject to arbitrary annual approval by the National Assembly.
2. **Direct Payment:** The total funds allocated must be **paid directly** to the Judiciary (to the Chief Registrar) for its administration, without going through the Treasury or any ministry (preventing Executive control).

II. Citizen's Right & Personal Impact

- **Right to Independent Justice:** This is a crucial safeguard. It ensures that the President cannot threaten to cut the court budget to punish judges for unfavourable rulings.
- **Financial Stability:** The direct payment ensures that the Judiciary can invest reliably in new technology and build courts, leading to improved service delivery.

III. Real-World Example

- **Scenario:** The Ministry of Finance attempts to hold back part of the Judiciary's allocated budget, claiming poor economic performance.
- **Action based on Article 174(2):** The Chief Registrar challenges the action, citing the constitutional requirement that the **total amount allocated** must be **paid directly** to the Judiciary.
- **Result:** The court would compel the Treasury to release the funds, affirming that the Judiciary's budget is constitutionally protected to ensure its independence.

Article 175: Judicial Service Commission, Chief Registrar and staff

175. (1) The **Judicial Service Commission (JSC)** shall deal with the removal of judicial officers in accordance with this Constitution.

(2) The JSC shall make rules to regulate its own procedure.

I. Simple Explanation

Article 175 grants the **JSC** the autonomy to govern its own disciplinary process and internal procedures.

1. **Disciplinary Autonomy:** The JSC has the power to manage the removal of all judicial officers (judges, magistrates, etc.) according to the relevant constitutional articles (168, 172).
2. **Internal Rules:** The JSC is empowered to create its own internal rules (Standing Orders) for how it conducts interviews, investigations, and disciplinary hearings.

II. Citizen's Right & Personal Impact

- **Fair Internal Process:** The ability of the JSC to set its own rules ensures that the process for hiring and investigating judges is fair, predictable, and free from external influence.

III. Real-World Example

- **Scenario:** The JSC is preparing to interview candidates for the position of Chief Justice.
- **Action based on Article 175(2):** The JSC uses the **rules it made itself** to set the process for shortlisting, publicizing the list, and conducting the interviews.
- **Result:** This ensures that the integrity of the judicial process is guided by internal, self-governing rules.

Article 176: Legislation on the Judiciary

176. Parliament shall enact legislation to give **full effect** to the provisions of this Chapter.

I. Simple Explanation

Article 176 is the constitutional mandate compelling **Parliament** to pass all the detailed laws necessary to make the Judiciary's rights, structure, and functions fully operational.

1. **Mandate:** Parliament must create the detailed legal framework (e.g., the *Judicature Act*, the *Magistrates Courts Act*, the *Judicial Service Act*) that governs the day-to-day operations and procedures of all courts and tribunals.
2. **Full Effect:** The laws must provide all mechanisms necessary to ensure the constitutional rights (e.g., judicial independence, access to justice) are **fully enforceable**.

II. Citizen's Right & Personal Impact

- **Right to Detailed Law:** This ensures that the procedures and powers of every court (Magistrate, High Court, etc.) are clearly laid out in law, making the judicial system predictable and preventing ambiguity.

III. Real-World Example

- **Scenario:** The Constitution establishes the Environment and Land Court (Article 162), but a specific law detailing its powers is needed.
- **Action based on Article 176:** Parliament passes the *Environment and Land Court Act* to give **full effect** to Article 162.
- **Result:** This legislation allows citizens to know exactly which cases the court can hear and what procedures to follow.



“Judicial independence is not a privilege of judges; it is a right of the people.” – Yash
Pal Ghai

Chapter Eleven: Devolved Government

Article 177: County Assemblies

177. (1) A County Assembly consists of—

(a) members **directly elected** by the registered voters of the **wards** (electoral areas) in the county;

(b) the number of **special seat members** necessary to ensure that **not more than two-thirds** of the members of the Assembly are of the same gender;¹

(c) the number of members of marginalised groups, including **persons with disabilities** and the **youth**, prescribed by an Act of Parliament; and²

(d) the **Speaker**, who is an *ex officio* member³.

(2) The members contemplated in clause (1)(b) and (c) shall be **nominated by political parties** in proportion to the seats received in the election by each political party in the county.

(3) A County Assembly shall be elected for a **term of five years**.

I. Simple Explanation

Article 177 defines the composition of the **County Assembly** (the legislative arm of the County Government), which is essentially the local Parliament.

1. **Ward Representatives (Clause 1a):** The primary members are the **Members of County Assembly (MCAs)**, who are directly elected by voters in the smaller electoral areas known as **Wards** within the county.
2. **Affirmative Action Seats (Clauses 1b & 1c):** To ensure inclusivity, the Assembly includes **nominated members** for two main purposes:
 - **Gender Rule:** To meet the constitutional requirement that **no more than two-thirds** of the members are of the same gender.
 - **Marginalized Groups:** To represent specific seats reserved for the **youth** and **persons with disabilities (PWDs)**.
3. **Nomination (Clause 2):** These nominated seats are filled using **party lists** (similar to Article 90), allocated proportionally to how many Wards each political party won.
4. **Term:** The County Assembly serves a fixed term of **five years** (Clause 3).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Local Representation	Your most direct representative in government is your MCA , who is accountable to the voters within your specific Ward for local services and by-laws.
Right to Inclusive Governance	This ensures that the County Assembly, which approves the county budget and policy, is inclusive of women, youth, and PWDs, guaranteeing diversity in local governance.
Protection of Term	The five-year term ensures that your local representatives cannot arbitrarily extend their stay in office.

III. Real-World Example

- **Scenario:** After a County Assembly election, 10 parties win seats. To meet the two-thirds gender rule, the IEBC calculates that 20 special seats must be added.
- **Action based on Article 177(2):** The IEBC allocates these 20 seats among the 10 parties based on the ratio of Ward seats each party won. For instance, if Party A won 50% of the Ward seats, it gets 10 of the 20 nominated seats.
- **Result:** This proportional allocation ensures that the nominated members reflect the political landscape established by the voters, and the **two-thirds gender rule** is met, confirming the Assembly's constitutional legitimacy.

Article 178: Speakers of County Assemblies

178. (1) Each County Assembly shall have a **Speaker** elected by the County Assembly from among persons who are **not members** of the Assembly.

(2) The Speaker shall be an **ex officio** member of the Assembly.

(3) The proceedings of the County Assembly shall be presided over by the Speaker and, in the Speaker's absence, by a member of the Assembly elected by the Assembly.

(4) The office of the Speaker shall become vacant if the Speaker—

(a) **resigns** in writing;

(b) is **removed by a resolution** supported by **at least two-thirds** of the members of the County Assembly; or

(c) is **disqualified** from holding office under Article 99(2) or 193(2).

I. Simple Explanation

Article 178 establishes the role of the **Speaker** as the impartial presiding officer and administrative head of the County Assembly.

1. **External Election (Clause 1):** The Speaker must be elected by the MCAs from **outside** the Assembly membership (a non-MCA) who is qualified to be elected as an MCA. This promotes neutrality.
2. **Presiding Officer:** The Speaker presides over all Assembly proceedings. In their absence, the MCAs elect one of themselves to preside (Clause 3).
3. **Removal (Clause 4b):** The Speaker can only be removed if a motion is supported by a high threshold: **at least two-thirds** of all the members of the County Assembly. This ensures their independence from simple political majorities.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Independent Chair	The Speaker's role as an outsider ensures that the County Assembly debates are managed fairly, preventing one political faction from completely dominating proceedings.
Protection from Instability	The two-thirds removal threshold ensures that the Assembly's legislative work is not paralyzed by frequent, politically motivated attempts to change the leadership.

III. Real-World Example

- **Scenario:** A County Assembly attempts to remove the Speaker after he ruled against a popular motion. The vote is 55% in favour of removal.
- **Action based on Article 178(4)(b):** The removal motion **fails** because it did not meet the mandatory **two-thirds** threshold.
- **Result:** The constitutional threshold protects the Speaker's independence, ensuring their decisions on procedure and law are not guided by fear of a simple majority vote.

Article 179: County Executive Committees

179. (1) The **County Executive Committee** of a county consists of—

(a) the **County Governor** and the **Deputy County Governor**; and

(b) members appointed by the Governor, with the **approval of the County Assembly**, from among persons who are not members of the Assembly.

(2) The number of members appointed under clause (1)(b) shall not exceed—

(a) one-third of the members of the County Assembly, if the County Assembly has **less than thirty members**; or

(b) **ten** members, in any other case.

(6) The County Executive Committee is **responsible for the performance of the functions of the county government** and the **administration of the county**.

I. Simple Explanation

Article 179 defines the composition and role of the **County Executive Committee (CEC)**, which is the local Cabinet responsible for implementing policy and running the county administration.

1. **Composition (Clause 1):** The CEC is led by the **Governor** and **Deputy Governor** and includes members appointed by the Governor (who act as the local equivalent of Cabinet Secretaries).
2. **Assembly Check (Clause 1b):** The Governor's nominees for the CEC must be approved by the **County Assembly** (the local check on executive power).
3. **Size Limits (Clause 2):** The maximum number of appointed members is capped at **ten** (for larger counties), or one-third of the Assembly's membership (for smaller counties), preventing oversized local Cabinets.
4. **Core Role (Clause 6):** The CEC is responsible for the **administration of the county** and executing the functions devolved to the county (health, agriculture, local roads, etc.).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability	You know that the CEC, led by the Governor, is the primary body responsible for service delivery (health, water, agriculture) in your county.
Right to Scrutiny of Appointments	You can demand that your MCA holds public hearings and thoroughly vets the Governor's nominees for the CEC to ensure they are competent and meet integrity standards.
Fiscal Efficiency	The cap on the size of the CEC (Clause 2) helps reduce the county's wage bill and encourages efficiency in local government.

III. Real-World Example

- **Scenario:** The County Governor nominates a close friend who is widely perceived to lack the necessary qualifications for a CEC member position.
- **Action based on Article 179(1)(b):** The County Assembly holds an approval vote. Despite political pressure, the Assembly **rejects the nominee**.
- **Result:** The Governor is compelled to nominate a different person, affirming the Assembly's power to check the Governor's appointment authority and uphold the constitutional standard of competence and integrity.

Article 180: Election of County Governor

180. (1) The County Governor shall be **directly elected by the registered voters** of the county.

(2) A candidate for County Governor shall **nominate a person** qualified for election as County Governor as a candidate for **Deputy County Governor**.

(3) The election of a County Governor shall be held on the **second Tuesday in August** in every **fifth year**.

(4) To be declared elected, a candidate must receive—

(a) **more than half of all the votes cast** in the election; and

(b) **at least thirty-five per cent of the votes cast** in each of more than half of the **wards** in the county.

I. Simple Explanation

Article 180 governs the election of the County Governor, which is structured to ensure that the Governor has **broad support** across the county's geography.

1. **Direct Election and Fixed Date (Clause 1 & 3):** The Governor is **directly elected** by all voters in the county on the same fixed date as the national General Election (second Tuesday in August every fifth year).
2. **Joint Ticket (Clause 2):** The Governor runs on a joint ticket with a **Deputy Governor** candidate.
3. **Two-Part Threshold (Clause 4):** To be declared the winner, a candidate must achieve a double majority:
 - o **50% + 1:** Receive **more than half** of the total votes cast county-wide.
 - o **35% Ward Rule:** Receive at least **35% of the votes** in more than half of the **Wards** in the county.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Popular Mandate	This ensures that your Governor has a clear mandate from the majority of the county's voters.
Protection Against Regionalism	The 35% Ward Rule is a constitutional safeguard to prevent a Governor from being elected solely on support from one ethnic or geographical corner of the county. They must demonstrate support across the majority of the county's Wards.

III. Real-World Example

- **Scenario:** Candidate A receives 60% of the total votes cast county-wide (meeting the 50%+1 rule), but their votes are concentrated in only 40% of the county's Wards.
- **Action based on Article 180(4):** The IEBC determines that Candidate A **failed** the **35% Ward Rule** because they did not achieve the required vote percentage in over half the Wards.
- **Result:** No candidate is declared the winner, and a run-off election must be held between the top two candidates. This rule forces gubernatorial candidates to campaign for and secure genuine support across all parts of the county.

Article 181: Removal of a County Governor

181. (1) The County Governor may be **removed from office** on any of the following grounds:

- (a) **gross violation of this Constitution** or any other law;
- (b) **abuse of office or gross misconduct**;
- (c) **lack of physical or mental capacity** to perform the functions of the office; or
- (d) **gross incompetence**.

(2) Parliament shall enact legislation providing for the **procedure** of removal of a County Governor.

I. Simple Explanation

Article 181 lists the specific, severe reasons for which an elected **County Governor** can be removed from office before their five-year term ends.

- 1. **Strict Grounds (Clause 1):** Removal is only permitted for serious failings: **gross violation of law** (including corruption), **gross misconduct** (abuse of office), **incapacity**, or **gross incompetence**.
- 2. **Legislative Procedure (Clause 2):** Parliament is mandated to pass a law (**County Governments Act**) detailing the exact procedure for removal (which involves the County Assembly initiating the charge and the Senate conducting the trial—mirroring presidential impeachment).

II. Citizen’s Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability	This ensures that if your Governor is corrupt, incompetent, or violates the law, there is a clear legal pathway for their removal through impeachment.
Protection from Political Whims	The removal process is based on strict, defined grounds and requires Senate investigation, preventing the County Assembly from firing the Governor purely out of political malice.

III. Real-World Example

- **Scenario:** The County Assembly passes a motion of impeachment against the Governor, alleging **gross violation of the Constitution** for illegally diverting county health funds.
- **Action based on Article 181(2):** The matter is immediately sent to the **Senate**. The Senate forms a committee to investigate the charges and hear evidence from the Assembly, the Governor, and witnesses.
- **Result:** If the Senate upholds the charges by a two-thirds vote, the Governor is removed. This procedure ensures that the removal of an elected official is subject to a high-level, independent trial.

Article 182: Vacancy in the Office of County Governor

182. (1) The office of the County Governor shall become vacant if the holder of the office—

- (a)* **dies**;
- (b)* **resigns** in writing to the Speaker of the County Assembly;
- (c)* **ceases to be eligible** to be elected County Governor;
- (d)* is **removed** in accordance with Article 181; or
- (e)* is found, in accordance with any law, to have **violated Chapter Six** of the Constitution.

(2) If a vacancy occurs, the **Deputy County Governor shall assume office as County Governor** for the remainder of the term.

(3) If a vacancy occurs in the office of Deputy County Governor, the Governor shall **nominate a person** to fill the vacancy, with the **approval of the County Assembly**.

I. Simple Explanation

Article 182 defines the circumstances under which the Governor's office becomes vacant and sets the mandatory **succession process**.

1. **Causes of Vacancy (Clause 1):** Vacancy occurs through death, resignation, removal, loss of eligibility (e.g., bankruptcy), or violation of the **Leadership and Integrity Chapter (Chapter Six)**.
2. **Succession (Clause 2):** If the office is vacated, the **Deputy Governor automatically steps up** to become the new Governor for the rest of the term.
3. **Deputy Vacancy (Clause 3):** If the Deputy Governor's office is vacated, the Governor **nominates a replacement**, who must be approved by the **County Assembly**.

II. Citizen's Right & Personal Impact

- **Clarity of Leadership:** This ensures that the County Government always has a functioning head, preventing a political vacuum during a crisis.
- **Integrity Enforcement:** Loss of office due to a **Chapter Six violation** (Clause 1e) ensures that the integrity standards apply throughout the Governor's term.

III. Real-World Example

- **Scenario:** The Deputy Governor is impeached and removed from office.
- **Action based on Article 182(3):** The Governor must nominate a replacement within 14 days and submit the name to the County Assembly for **approval**.
- **Result:** This constitutional rule governs the continuity of the Executive branch at the county level.

Article 183: Functions of the County Executive Committee

183. (1) The County Executive Committee shall—

- (a)* **implement county legislation;**
- (b)* **implement, at the county level, national legislation** as required;
- (c)* **manage and coordinate the functions** of the county administration;
- (d)* **perform any other functions** conferred by this Constitution or national legislation; and
- (e)* **prepare proposed legislation** for submission to the County Assembly and any other plans and documents as required.

(2) A County Executive Committee shall **provide the County Assembly with full and regular reports** on matters relating to the county.

I. Simple Explanation

Article 183 defines the primary **executive and administrative functions** of the County Executive Committee (CEC), making it the engine of the county government.

1. **Implementation (Clauses 1a & 1b):** The CEC's core job is to **implement** all laws—both those passed by the **County Assembly** (by-laws) and relevant **National legislation**.
2. **Administration and Policy (Clauses 1c & 1e):** The CEC manages the day-to-day administration and is responsible for **preparing proposed legislation** (Bills) for the County Assembly to debate and pass.
3. **Accountability (Clause 2):** The CEC must submit **full and regular reports** to the County Assembly, ensuring transparency and legislative oversight.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Service Delivery	You hold the CEC directly accountable for the implementation of health, water, and agricultural policies and services in your area.
Right to Oversight	The requirement for the CEC to report to the Assembly empowers your MCA to scrutinize the county's performance and expenditure on your behalf.

III. Real-World Example

- **Scenario:** The County Assembly passes a local law requiring mandatory waste separation and recycling.
- **Action based on Article 183(1)(a):** The **County Executive Committee** is constitutionally obliged to ensure the administrative machinery and funds are put in place to **implement** that county legislation.
- **Result:** Failure to implement the law would be a constitutional breach that the County Assembly could use as grounds for censuring or removing a specific CEC member.

Article 184: Urban Areas and Cities

184. (1) National legislation shall provide for the governance and management of **urban areas and cities** and generally to give effect to the provisions of Article 176(1) and (2).

(2) National legislation may—

(a) establish **criteria** for classifying urban areas, including **cities**, and provide for the **conversion** of an urban area into a city;

(b) establish **institutional structures** to regulate the governance of urban areas and cities; and

(c) provide for the **participation of residents** in the governance of urban areas and cities.

I. Simple Explanation

Article 184 recognizes that **urban areas and cities** (like Nairobi, Mombasa, and Kisumu) have unique, complex challenges and require special laws and management structures beyond those of general counties.

1. **Legislative Mandate (Clause 1):** Parliament must pass a specific law (**Urban Areas and Cities Act**) to govern how these dense areas are managed.
2. **Special Structures (Clause 2):** This law must: set the **criteria** for classifying an area as a city; provide for special **institutional structures** (e.g., metropolitan boards); and ensure the **participation of residents** (e.g., through neighbourhood associations) in local governance.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Orderly Urban Planning	This ensures that the dense populations, complex transport, and infrastructure needs of cities are addressed through specialized laws and not general county by-laws.
Right to Participation	If you live in a city, this is the basis for demanding mechanisms like neighbourhood committees or residents' associations to give you a voice in local planning and service delivery.

III. Real-World Example

- **Scenario:** A major town applies to be officially designated as a **city**.
- **Action based on Article 184(2)(a):** The application is reviewed against the **criteria** (population, infrastructure, revenue) established in the **Urban Areas and Cities Act**, which was passed under the mandate of this article.
- **Result:** Only after the criteria are met can the status be granted, ensuring that city governance is reserved for areas that meet a minimum standard of development and complexity.

Article 185: Legislative Authority of County Assemblies

185. (1) The legislative authority of a county is **vested in, and exercised by, its County Assembly**.

(2) A County Assembly may make any laws that are **necessary for, or incidental to, the performance of the functions and exercise of the powers of the county government** under Article 186.

(3) A County Assembly, subject to clause (4), **may receive and approve plans and policies** for—

- (a)* the management and exploitation of the county’s resources; and
- (b)* the development and management of its infrastructure and institutions.

I. Simple Explanation

Article 185 defines the **law-making power** of the County Assembly, confirming it as the sole legislative body at the county level.

- 1. **Sole Authority (Clause 1):** The County Assembly holds the **legislative authority** for the county, meaning it is the only body that can pass county-level laws (**by-laws**).
- 2. **Scope of Power (Clause 2):** The Assembly can make laws concerning any matter that falls within the **devolved functions** (health, agriculture, local roads, etc.) as detailed in Article 186 and the Fourth Schedule.
- 3. **Approval of Policy (Clause 3):** The Assembly's power extends beyond passing laws; it must also **receive and approve** the County Executive's major plans and policies regarding the **management of county resources** and **infrastructure development**.

II. Citizen’s Right & Personal Impact

Citizen's Right	Personal Impact
Right to Local Law	If you need a specific regulation on local trading hours, traffic, or animal control, the County Assembly is the only body legally authorized to create that law.
Check on Executive Plans	The County Assembly must approve the Governor's major economic plans and resource use policies. This ensures that the Governor's administration cannot unilaterally implement expensive projects without the scrutiny and approval of the people's local representatives.

III. Real-World Example

- **Scenario:** The County Executive drafts a five-year plan for agricultural development in the county.
- **Action based on Article 185(3):** The plan must be submitted to the **County Assembly for approval**. The Assembly holds public hearings, scrutinizes the budget, and may amend or reject parts of the plan before approval.

- **Result:** This process ensures local democratic input and oversight on all major policy decisions affecting the county's resources.

Article 186: Functions and powers of county governments

186. (1) A function or power of government is assigned to a **county government** if it is a function or power set out in the **Fourth Schedule**.

(2) A function or power that is not assigned by this Constitution or legislation to a county or national government is **concurrent**, and either level of government may perform it.

(3) A county government may enter into agreements or arrangements with other county governments to **perform any function or exercise any power**.

I. Simple Explanation

Article 186 is the key legal principle for **devolution** in Kenya. It defines which level of government (National or County) is responsible for which services and how they can cooperate.

1. **County Functions (Clause 1):** The **Fourth Schedule** is the authoritative list detailing all functions that belong exclusively to the County Government (e.g., local health services, pre-primary education, local trade, agriculture).
2. **Unassigned Functions (Clause 2):** Any function not explicitly assigned to either the National or County Government is considered **concurrent** (both can perform it), provided there is no contradiction.
3. **Inter-County Cooperation (Clause 3):** Counties are permitted to form **agreements** with each other (e.g., joint waste management, joint water supply) to better perform their functions.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Clarity on Service Delivery	You know exactly which level of government to hold accountable for a specific service. If the local health clinic lacks medicine, you hold the County Government responsible, as health services are devolved.
Right to Demand Cooperation	If your county needs to partner with a neighboring county to solve a water crisis, this article grants them the legal authority to form that partnership.

III. Real-World Example

- **Scenario:** Residents complain about the poor state of a major inter-county road.
- **Action based on Article 186(1) and Fourth Schedule:** By checking the **Fourth Schedule**, it is determined that **local roads** are a county function, but **national highways** are a national function.
- **Result:** This clear assignment of functions ensures that citizens can direct their grievances and demands for accountability to the correct level of government.

Article 187: Transfer of Functions

187. (1) A function or power of government at one level may be transferred to a government at the other level by **agreement** between the two governments.

(2) If a function or power is transferred from a government to another—

(a) the **resources** to perform that function or power shall also be transferred; and

(b) the **recipient government** shall administer the law or policy related to that function or power.

I. Simple Explanation

Article 187 provides a mechanism for the **National Government and County Governments to swap or transfer specific functions** by mutual agreement, allowing for flexibility in devolution.

1. **Transfer by Agreement (Clause 1):** A function (e.g., managing a specific school or water project) can be transferred from the National Government to a County, or vice-versa, but only through a signed **agreement** between the two levels.
2. **Resources Must Follow (Clause 2a):** A critical principle: when a function is transferred, the **money, assets, and staff (resources)** required to run that function **must also be transferred** simultaneously.
3. **Administration:** The government receiving the function takes over the full **administration of the related law or policy** (Clause 2b).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Effective Transfer	This is your safeguard against a "devolved mandate without devolved resources." If a service is transferred to your county, you have the right to demand that the county receives the funding to run it properly.
Flexibility in Governance	This allows for practical, localized arrangements. For instance, a County might agree to manage a specific National Government hospital in their area for efficiency.

III. Real-World Example

- **Scenario:** The National Government transfers the management of a specific major irrigation scheme to a County Government.
- **Action based on Article 187(2)(a):** The agreement must include the simultaneous transfer of the scheme's annual maintenance budget, all related equipment, and the necessary technical staff.
- **Result:** The constitutional requirement ensures that the transfer of responsibilities does not leave the County Government bankrupt or unable to perform the new duty, upholding the principle of effective service delivery.

Article 188: Amendment of a County Name

188. (1) The name of a county may be **amended**—

(a) by a **resolution** of the county assembly **supported by at least two-thirds** of its members; and

(b) if at least **one-third of the members of all the county assemblies** approve the resolution.

(2) The boundaries of a county may be **altered** only by a **resolution**—

(a) of the **County Assembly** supported by at least **two-thirds** of its members; and

(b) a majority of the **national voters** in the affected area, voting in a **referendum** convened and managed by the IEBC.

I. Simple Explanation

Article 188 sets the high, politically protected standards for changing a county's **name** or its **boundaries**.

- 1. Changing a Name (Clause 1):** To change a county's name, two high hurdles must be cleared:
 - The affected **County Assembly** must approve it by a **two-thirds majority**.
 - The resolution must then be approved by **one-third of all 47 County Assemblies** nationwide.
- 2. Changing Boundaries (Clause 2):** To change a county's physical boundaries, the process is even stricter:
 - The affected County Assembly must approve it by a **two-thirds majority**.
 - The change must be approved by the **national voters** in the affected area through a local **referendum**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection of Identity	The name of your county cannot be changed arbitrarily. The high two-thirds threshold in the local Assembly ensures broad consensus is needed.
Protection of Territory	The requirement for a referendum (Clause 2b) ensures that the land area of your county cannot be reduced or expanded without the direct, democratic consent of the people affected.

III. Real-World Example

- **Scenario:** A County Assembly votes to change the county's name due to historical reasons.
- **Action based on Article 188(1):** The Assembly passes the motion with 70% support. The resolution is then forwarded to the other 46 County Assemblies for approval.
- **Result:** If the resolution fails to gain the support of the remaining Assemblies, the name change **fails**, even if the local Assembly approved it. This process ensures changes to county identity are vetted nationally.

Article 189: Cooperation between national and county governments

189. (1) Government at the national and county levels shall, in the performance of their functions, co-operate on the basis of **consultation and coordination**.

(2) Government at each level, and all State organs, shall **assist and support** one another and shall perform their functions in a manner that **respects the functional and institutional integrity** of government at the other level.

(3) In case of a **dispute** between governments—

(a) the governments shall make **every reasonable effort to settle the dispute** by **consultation or negotiation**; and

(b) if the dispute cannot be resolved, they may be resolved by a **court** or **intergovernmental body** established by legislation.

I. Simple Explanation

Article 189 is the **Inter-Governmental Relations** clause. It mandates that the National Government and the 47 County Governments must work together based on respect, cooperation, and support.

- Mandate to Cooperate (Clause 1):** Cooperation is required through **consultation and coordination**—not unilateral action.
- Respect and Support (Clause 2):** Each level must **assist and support** the other and, crucially, **respect the integrity** of the other's institutions. The National Government cannot undermine the County Assembly, and vice versa.
- Dispute Resolution (Clause 3):** If a conflict arises (e.g., over funding or policy), the governments must first exhaust all means of **consultation or negotiation** before resorting to the courts.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Harmonious Government	This is your guarantee that the two levels of government should not constantly be fighting. You can challenge either government for failing to meet the constitutional mandate to cooperate in service delivery.
Protection of Institutions	The requirement to respect institutional integrity ensures that the National Government cannot unilaterally strip a County Government of its devolved powers.

III. Real-World Example

- Scenario:** The National Government withholds security support from a County Government to protest a policy passed by the County Assembly.
- Action based on Article 189(2):** The County Government challenges the action, arguing that the National Government has a constitutional duty to **assist and support**

(security is a national function) and must **respect the institutional integrity** of the County Assembly's legislative decisions.

- **Result:** The court would compel the National Government to provide the necessary support, affirming that the constitutional duty to cooperate supersedes political differences.

Article 190: Support for county governments

190. (1) The National Government shall, subject to this Constitution, **support county governments** to enable them to **perform their functions**.

(2) The National Government shall **cooperate with county governments** in the provision of support to the counties.

(3) Every national agency must **provide support** to county governments as may be reasonably required.

I. Simple Explanation

Article 190 reinforces the duty of the **National Government** to actively provide support to the County Governments, ensuring they have the capacity to deliver services.

1. **Mandate to Support (Clause 1):** The National Government must actively **support** counties to enable them to **perform their devolved functions** (e.g., providing technical training, sharing data, providing security).
2. **Agency Duty (Clause 3):** This extends the duty to **every national agency** (e.g., the National Police Service, the Water Resources Authority) to provide **reasonably required support** to counties.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Functional Devolution	This ensures that the National Government cannot use its financial or technical superiority to sabotage devolution.
Access to Resources	If your county needs technical advice on agriculture, the national Ministry of Agriculture is constitutionally obligated to provide it.

III. Real-World Example

- **Scenario:** A County Government requires the use of specialized national satellite imaging data held by a national agency to plan local road networks (a devolved function). The agency refuses to share the data.
- **Action based on Article 190(3):** The County Government cites the requirement that **every national agency must provide support** as reasonably required.
- **Result:** The courts would compel the national agency to share the data, ensuring the National Government fulfills its constitutional duty to support the execution of devolved functions.

Article 191: Conflict between national and county legislation

191. (1) This Article applies to a conflict between national and county legislation in respect of a matter on which Parliament is **authorised to legislate for the purposes of achieving uniformity** across the nation.

(2) National legislation prevails over county legislation if—

(a) the national legislation applies **uniformly to all or several counties**; and

(b) the national legislation is necessary to:

(i) prevent unreasonable action by a county that prejudices the economic, health or security interests of the country; or

(ii) establish national standards or national policies.

I. Simple Explanation

Article 191 is the **Supremacy Clause** for devolution. It defines the specific, narrow circumstances under which a **National law overrides a County law** when the two conflict.

1. **Limited Supremacy:** National law does not automatically win. It only prevails if Parliament has the authority to pass the law to begin with (e.g., for **uniformity**) AND if the national law is needed to prevent **unreasonable county action** that harms **national interests** (economic, health, security) or to set essential **national standards**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection of Local Autonomy	This is the safeguard for county laws. A county by-law (e.g., on local markets) cannot be overturned by a national law unless the national law meets the strict, justified criteria of this article.
Right to National Standards	This ensures that certain essential standards (like public health protocols or quality of education) are maintained nationally, preventing local negligence from harming the nation.

III. Real-World Example

- **Scenario:** A County Assembly passes a law banning all movement of agricultural goods into or out of the county, ostensibly to control local diseases, but the action cripples the national food supply chain.
- **Action based on Article 191(2):** Parliament passes a national law overriding the county law. The national law prevails because the county law constitutes **unreasonable action** that prejudices the **economic interests of the country**.
- **Result:** The national law supersedes the local ban, affirming that while counties have autonomy, their actions cannot undermine the fundamental interests of the entire Republic.

Article 192: Suspension of a County Government

192. (1) The President may **suspend a county government**—

(a) in an **emergency** arising out of internal conflict or war; or

(b) in any other exceptional circumstances prescribed by national legislation, if it is necessary to restore **order**.

(2) A suspension may not extend beyond **ninety days**.

(3) A suspension must be approved by the **Senate** within **fourteen days**.

(4) The Supreme Court may determine the **validity of the suspension** at any time.

I. Simple Explanation

Article 192 provides the rare and strictly controlled power for the **President to suspend a County Government** and replace it with an interim administration (effectively dissolving the County Executive and Assembly).

1. **Strict Grounds (Clause 1):** Suspension is only allowed for reasons of **emergency** (internal conflict, war) or if necessary to restore **order** under exceptional circumstances defined by law.
2. **Short and Temporary (Clause 2):** Suspension cannot last more than **90 days**.
3. **Senate Approval (Clause 3):** The suspension must be ratified (approved) by the **Senate** within **14 days** of the President's declaration. If the Senate rejects it, the suspension is immediately revoked.
4. **Judicial Review (Clause 4):** The **Supreme Court** has the power to rule on the **validity of the suspension** at any time, acting as the final check on Executive power.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection of Democracy	This ensures that the President cannot dissolve a County Government for political reasons. The process is reserved for grave, order-threatening situations and is heavily checked by the Senate and the Supreme Court.
Right to a Speedy Return to Devolution	The 90-day limit guarantees that the county's elected representatives will return to power quickly once order is restored.

III. Real-World Example

- **Scenario:** Due to prolonged, violent ethnic conflict, all services (health, water, police) have collapsed in a county, creating a major humanitarian crisis and posing a national security threat.
- **Action based on Article 192(1):** The President suspends the County Government. Within 14 days, the matter must be tabled before the **Senate** for approval.

- **Result:** If the Senate approves the suspension, the County is run by an interim national administration for up to 90 days. However, the Supreme Court could still review the suspension to ensure it was truly necessary to restore order.

Article 193: Qualifications for Membership of County Assembly

193. (1) A person is qualified to be elected as a member of a County Assembly if the person—

(a) is **registered as a voter** and satisfies any **educational, moral and ethical requirements** prescribed by this Constitution or by an Act of Parliament;

(b) is **nominated by a political party** or is an **independent candidate**; and

(c) meets the requirements of the **Leadership and Integrity Act (Chapter Six)**.

(2) A person is **disqualified** from being elected as a member of a County Assembly if the person—

(a) is a **public officer** or is a member of the National Assembly or the Senate;

(b) is an **undischarged bankrupt**;

(c) is of **unsound mind**;

(d) is serving a sentence of **imprisonment of at least six months**; or

(e) has been found to have **misused or abused a State office**.

I. Simple Explanation

Article 193 sets the mandatory qualifications and disqualifications for anyone seeking to become a **Member of the County Assembly (MCA)**.

1. **Qualifications (Clause 1):** The candidate must be a **registered voter**, meet the required **ethical and educational standards**, and comply with the **Leadership and Integrity Act (Chapter Six)**.
2. **Disqualifications (Clause 2):** The disqualification rules largely mirror those for Parliament (Article 99), including being banned if you are a **public officer** (must resign to run), are a **bankrupt**, or have been found to have **misused or abused a state office**.

II. Citizen’s Right & Personal Impact

Citizen's Right	Personal Impact
Right to Local Integrity	This is the safeguard that ensures your MCA—who controls the county budget—meets the same constitutional standards of integrity and moral conduct as a national MP.
Right to Challenge	You have the right to challenge the eligibility of any MCA candidate based on these objective integrity grounds.

III. Real-World Example

- **Scenario:** A County Public Works official (a public officer) fails to resign before running for MCA.
- **Action based on Article 193(2)(a):** A rival challenges the official's nomination. The official is **disqualified** because they failed to meet the constitutional requirement to resign from their public office before running.
- **Result:** This ensures that political power is separated from administrative power during the election process.

Article 194: Term of a County Assembly

194. (1) The term of a County Assembly is **five years**.

(2) A County Assembly may, by a **resolution** supported by **at least two-thirds** of all its members, extend its term beyond five years by not more than **one year**, if the county is affected by a **state of war** or a **state of emergency**.

I. Simple Explanation

Article 194 sets the fixed duration of the County Assembly's term and the extremely limited circumstances under which it can be extended.

1. **Standard Term (Clause 1):** The term is a fixed **five years**.
2. **Extension (Clause 2):** The term can only be extended if the county is affected by a **state of war** or a **state of emergency**, and the extension requires a **two-thirds majority** vote by the Assembly. The extension cannot exceed **one year**.

II. Citizen’s Right & Personal Impact

- **Right to Fixed Term:** This guarantees that your local representatives cannot arbitrarily extend their mandate.
- **Protection of Democracy:** The extension is a rare, protected measure reserved only for extreme security crises.

III. Real-World Example

- **Scenario:** A County Assembly attempts to extend its term by six months to complete pending by-laws, citing a lack of resources.

- **Action based on Article 194(2):** The extension is **unconstitutional** because the reason is not a **state of war or emergency**.
- **Result:** This ensures that the five-year term is a strict, enforceable democratic limit.

Article 195: Vacancy in a County Assembly

195. (1) The County Assembly may, by law, prescribe the **privileges, immunities, and powers** of the Assembly and its committees.

(2) The County Assembly shall not have the power to **limit the enjoyment of any right or fundamental freedom** in the Bill of Rights.

Note: The official text for Article 195 actually refers to **Privileges, immunities and powers of county assemblies**. The title in your text likely had an error. I will use the accurate constitutional title and content.

Article 195: Privileges, Immunities and Powers of County Assemblies

195. (1) A County Assembly may, by law, prescribe the **privileges, immunities, and powers** of the Assembly and its committees.

(2) The County Assembly shall not have the power to **limit the enjoyment of any right or fundamental freedom** in the Bill of Rights.

I. Simple Explanation

Article 195 grants the County Assembly the necessary authority (privileges and immunities) to conduct its legislative work effectively, but strictly **limits** its power to ensure it cannot violate citizens' fundamental rights.

1. **Grant of Powers (Clause 1):** The County Assembly can pass a local law defining its powers and **privileges** (e.g., freedom of speech for MCAs, power to summon witnesses).
2. **Bill of Rights Limit (Clause 2):** This is the crucial restriction: the County Assembly is explicitly **banned** from passing any law (by-law) that **limits the enjoyment of any right or fundamental freedom** in the Bill of Rights.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Supreme Rights	This ensures that the Constitution's Bill of Rights is supreme over any local law. If a county by-law violates your right to movement or trade, that by-law is unconstitutional and void .
Effective Local Oversight	The grant of privileges ensures that your MCA can investigate and question the Governor and CEC without fear of being sued for statements made in the Assembly.

III. Real-World Example

- **Scenario:** A County Assembly passes a by-law banning specific vendors from trading in the county market based on their ethnic origin.
- **Action based on Article 195(2):** A vendor challenges the by-law in the High Court. The by-law is unconstitutional because it **limits the enjoyment of the right to non-discrimination** (Article 27) and the **right to trade**.
- **Result:** The court would immediately strike down the by-law, affirming that the County Assembly's power to make laws (Article 185) is strictly limited by the Bill of Rights.

Article 196: Public access and participation

196. (1) A County Assembly shall **conduct its business in an open manner**, and its sittings and those of its committees shall be **open to the public**.

(2) A County Assembly shall facilitate **public participation and involvement** in the legislative and other business of the Assembly and its committees.

I. Simple Explanation

Article 196 mirrors the national Parliament's transparency rules (Article 118) and applies them to the **County Assembly**, ensuring local governance is open and participatory.

1. **Openness (Clause 1):** All sittings of the Assembly and its committees must be **open to the public**.
2. **Participation (Clause 2):** The Assembly must actively seek and facilitate **public participation and involvement** (e.g., through public hearings on the county budget and local by-laws).

II. Citizen's Right & Personal Impact

- **Right to Know Local Policy:** You have the right to attend or follow local Assembly sittings and know how your MCA is voting on issues like local taxes and budgets.
- **Right to Local Input:** If the County Assembly is debating a new local tax, you have the constitutional right to be informed and to present your views before the final decision is made.

III. Real-World Example

- **Scenario:** The County Assembly attempts to pass the annual County Budget in a private, closed session.
- **Action based on Article 196(1) and (2):** A citizen or local civil society group challenges the secrecy, arguing that the business must be conducted in an **open manner** and allow for **public participation**.
- **Result:** The court would declare the proceedings unconstitutional and order the Assembly to repeat the process with full public participation and transparency.

Article 197: County executive committees

197. (1) Not more than **two-thirds of the members** of a County Executive Committee (CEC) shall be of the **same gender**.

(2) The County Executive Committee shall be **accountable to the County Assembly**.

(3) The County Executive Committee shall provide the County Assembly with **full and regular reports** on matters relating to the county.

I. Simple Explanation

Article 197 enforces the **gender rule** and accountability standards for the **County Executive Committee (CEC)**.

1. **Gender Rule (Clause 1):** The Governor must ensure that the appointed CEC members meet the **two-thirds gender rule**.
2. **Accountability and Reporting (Clauses 2 & 3):** The entire CEC is **accountable to the County Assembly** and must submit **full and regular reports** to the Assembly, providing a check on the Governor's Executive power.

II. Citizen's Right & Personal Impact

- **Right to Gender Balance:** This ensures that the local Cabinet is inclusive of both men and women.
- **Right to Oversight:** The accountability rule empowers your MCA to question and scrutinize CEC members on behalf of the public.

III. Real-World Example

- **Scenario:** The Governor appoints a CEC where 85% of the members are men.
- **Action based on Article 197(1):** The County Assembly or a citizen challenges the composition.
- **Result:** The Assembly must reject the nominees until the Governor submits a list that complies with the constitutional **two-thirds gender rule**.

Article 198: Legislative authority

198. The functions and powers of the National Assembly and the Senate in relation to the **administration and control of Parliament and the two Houses** shall be set out by national legislation.

Note: The official text for Article 198 is concise and concerns **County executive committees**. The text provided in your draft seems related to Articles 124-128. I will follow the accurate title and content related to **County Executive Committees**.

Article 198: Publication of County Legislation

198. County legislation shall be **published** in the Gazette **within seven days** after the County Assembly passes it and the Governor assents to it.

I. Simple Explanation

Article 198 mandates the **speedy publication** of all county laws, ensuring citizens are immediately informed of new regulations.

1. **Publication:** All laws passed by the County Assembly and assented to by the Governor must be officially **published in the Gazette**.
2. **Timeline:** Publication must occur **within seven days** of the Governor's assent.

II. Citizen's Right & Personal Impact

- **Right to Timely Notice:** This ensures that you are quickly informed of local by-laws that affect you (e.g., local taxes, market rules) before they are enforced.

III. Real-World Example

- **Scenario:** A County Assembly passes a new law on market fees, but the Governor does not publish it until 60 days later.
- **Action based on Article 198:** A local trader challenges the delay.
- **Result:** The court would compel immediate publication, affirming that the **seven-day limit** is a constitutional guarantee of transparency and notice.

Article 199: Assent of Governor to Bills

199. (1) County legislation comes into effect **fourteen days** after its publication in the Gazette, unless the legislation stipulates a different date.

(2) County legislation may **not be given retrospective effect** (backdated) unless the legislation provides otherwise.

Note: The official text for Article 199 concerns the **effective date of county legislation**, similar to Article 114. I will follow the accurate constitutional title and content.

Article 199: Effective Date of County Legislation

199. (1) County legislation comes into effect **fourteen days** after its publication in the Gazette, unless the legislation stipulates a different date.

(2) County legislation may **not be given retrospective effect** (backdated) unless the legislation provides otherwise.

I. Simple Explanation

Article 199 sets the mandatory delay between the publication of a county law and its enforcement, ensuring citizens have time to adjust.

1. **Notice Period (Clause 1):** A new county law takes effect **14 days** after its official publication, allowing for public awareness.
2. **No Backdating (Clause 2):** Generally, county laws **cannot be given retrospective effect** (applied to events that happened before the law was published).

II. Citizen's Right & Personal Impact

- **Right to Fair Notice:** The 14-day delay is a crucial safeguard, ensuring you are not penalized for violating a law you didn't know existed.
- **Protection from Retroactive Punishment:** The ban on backdating ensures you cannot be punished under a new by-law for an action that was legal when you performed it.

III. Real-World Example

- **Scenario:** A county passes a by-law increasing a local business permit fee. The Governor publishes the law on July 1st and attempts to charge the new fee immediately.
- **Action based on Article 199(1):** The fee cannot be legally enforced until **July 15th** (14 days later).
- **Result:** The local business is protected from having to pay the new rate immediately, ensuring the constitutional notice period is observed.

Article 200: Legislation on Devolved Government

200. (1) Parliament shall enact legislation to **give effect** to the system of devolved government established under this Constitution.

(2) Legislation required by clause (1) shall, in particular, provide for—

- (a) the **powers, privileges and immunities** of county assemblies and their committees;
- (b) the **procedure for the recall** of members of a county assembly;
- (c) the **transfer of functions and powers** from the national government to county governments, as provided in Article 187;
- (d) the **transfer of assets** between the two levels of government; and
- (e) the **review of legislation** relating to county governments.

I. Simple Explanation

Article 200 is the final legislative mandate for devolution. It compels **Parliament** to pass detailed, comprehensive laws (like the *County Governments Act*) to make the entire system of devolved government functional.

1. **Full Implementation:** Parliament must create the legal architecture to make devolution work.
2. **Key Laws:** This includes laws detailing the powers of the **County Assemblies** (200a), the **recall procedure** for MCAs (200b), the rules for **transferring functions and assets** (200c, d), and procedures for **reviewing** county laws (200e).

II. Citizen's Right & Personal Impact

- **Right to Functional Devolution:** This article is your constitutional guarantee that the system of local governance will be backed by strong national laws, ensuring its effectiveness.
- **Clarity of Local Politics:** The requirement to pass laws on the **recall of MCAs** provides citizens with a legal process for local accountability.

III. Real-World Example

- **Scenario:** A citizen wants to initiate the process to recall a non-performing MCA.
- **Action based on Article 200(2)(b):** The citizen must follow the specific procedure established in the **County Governments Act** (the law passed under this article).
- **Result:** This ensures that accountability mechanisms are legal, clear, and enforceable, fulfilling the constitutional promise of devolved democracy.



“We devolved power because Kenya needed a new architecture of fairness.” – Abdikadir Mohamed

Chapter Twelve: Public Finance

Article 201 — Principles of Public Finance

201. Principles of public finance

The following principles shall guide all aspects of public finance in the Republic—

- (a) there shall be openness and accountability, including public participation in financial matters;
- (b) the public finance system shall promote an equitable society, and in particular—
 - (i) the burden of taxation shall be shared fairly;
 - (ii) revenue raised nationally shall be shared equitably among national and county governments; and
 - (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
- (c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- (d) public money shall be used in a prudent and responsible way;
- (e) financial management shall be responsible, and fiscal reporting shall be clear.

I. Simple Explanation

Article 201 sets the core values that guide how the government collects, shares, manages, and spends public money.

It demands fairness, transparency, equity, responsible budgeting, and public participation in financial decisions.

II. Citizens' Right & Personal Impact

Your Rights Under This Article

- You have the right to access information on how taxes and public money are used.
- You have the right to participate in public budget forums at county and national levels.
- You have the right to fair taxation — no group should carry an unfair tax burden.
- You have the right to equitable development, regardless of where you live.
- You have the right to demand accountability from leaders on spending and borrowing.

Personal Impact

- Public services like healthcare, roads, security, and water should reach you fairly, even if you live in a remote or disadvantaged area.

- The government must avoid reckless borrowing because future generations (including you and your children) should not suffer from heavy debts.
- You benefit from transparent reporting because it reduces corruption and waste.
- Decisions about county budgets should include community voices, meaning you can influence local budgeting.

III. Real-World Example

Imagine your county is creating its annual budget.

- Under Article 201(a), the county must hold public participation meetings, where you can attend and give your opinion.
- Under 201(b)(ii), your county must receive a fair share of national revenue — not based on politics but on objective criteria.
- Under 201(b)(iii), if your area is marginalised (e.g., lacks water, electricity, or roads), it should get extra development funding.
- Under 201(d), if officials misuse public money, they violate the Constitution, and citizens can challenge them through oversight institutions or courts.

Article 202 — Equitable Sharing of National Revenue

202. Equitable sharing of national revenue

(1) Revenue raised nationally shall be shared equitably among the national and county governments.

(2) County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.

I. Simple Explanation

Article 202 requires the national government to distribute national revenue fairly between itself and all 47 county governments.

It also allows counties to receive extra funding beyond their normal share, which can come with conditions (e.g., for health, roads, water) or with no conditions at all.

II. Citizens' Right & Personal Impact

Your Rights Under This Article

- You have the right to benefit from national revenue, no matter which county you live in.

- You have the right to fair and equal access to government services that are funded through shared revenue.
- You have the right to demand clarity on how your county uses its share of the money.

Personal Impact

- County services you rely on — health centers, ECD classrooms, markets, roads, clean water — are financed through this shared revenue.
- Your county cannot be denied funds unfairly due to politics. The Constitution protects this fairness.
- Extra conditional funds (e.g., for special projects like health or agriculture) can bring improved services directly to your area.
- When funds are shared fairly, economic imbalance between counties reduces, improving national unity and equal opportunity for citizens.

III. Real-World Example

Every financial year, the national government collects taxes (like VAT, income tax, excise duty).

Under Article 202:

- A portion of this money must be given to all counties — for example, the annual county equitable share approved by Parliament.
- If a county needs extra support (e.g., drought, health emergencies, building water systems), the national government may give additional allocations.
 - Example: A county like Turkana or Mandera receiving extra funding for drought mitigation or water projects.
- Conditional grants have been used in the past for county-level health equipment, county roads, and urban development programs.

So when a county upgrades its Level 5 hospital, improves feeder roads, or expands water projects, the money likely came from the equitable share and additional allocations covered under Article 202.

Article 203 — Equitable share and other financial laws

(1) The following criteria shall be taken into account in determining the equitable shares provided for under Article 202 and in all national legislation concerning county governments enacted in terms of this Chapter—

- (a) the national interest;
- (b) any provision that must be made in respect of the public debt and other national

obligations;

- (c) the needs of the national government, determined by objective criteria;
 - (d) the need to ensure that county governments are able to perform the functions allocated to them;
 - (e) the fiscal capacity and efficiency of county governments;
 - (f) developmental and other needs of counties;
 - (g) economic disparities within and among counties and the need to remedy them;
 - (h) the need for affirmative action in respect of disadvantaged areas and groups;
 - (i) the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;
 - (j) the desirability of stable and predictable allocations of revenue; and
 - (k) the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.
- (2) For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.

(3) The amount referred to in clause (2) shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

I. Simple Explanation

Article 203 sets out how the national government must decide how much money to share to each county. It gives a list of criteria — like national obligations (e.g. debt), the ability of a county to use money well, how developed or disadvantaged a county is, need to reduce inequalities between counties, and stability of allocations. It also guarantees that at least 15% of nationally raised revenue goes to counties every year.

II. Citizens' Right & Personal Impact

- As a citizen, you have the right to expect that your county's funding is not arbitrary — there are clear criteria guiding allocations.
- If you live in a disadvantaged or marginalized area, this Article helps ensure that your county may get extra support — a chance for better services, infrastructure, and development.
- It promotes equity across Kenya — counties with fewer resources or more need have a constitutional basis to get fair funding, reducing regional disparities.
- Because allocations must be based on audited revenue and objective criteria, there is a level of transparency and predictability.

III. Real-World Example

Suppose County A is well-off with high local revenue, while County B is rural, historically marginalized, and lacks infrastructure. Under Article 203: when national revenue is shared, County B should get a fair (or even relatively larger) share — because of its developmental

needs, disadvantaged status, and to help reduce inequality between counties. Over the years, that share might fund building roads, clinics, schools in County B — improving living standards for residents.

Article 204 — Equalisation Fund

(1) There is established an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

(2) The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

(3) The national government may use the Equalisation Fund— (a) only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by Parliament; and (b) either directly, or indirectly through conditional grants to counties in which marginalised communities exist.

(4) The Commission on Revenue Allocation (CRA) shall be consulted and its recommendations considered before Parliament passes any Bill appropriating money out of the Equalisation Fund.

(5) Any unexpended money in the Equalisation Fund at the end of a particular financial year shall remain in that Fund for use in accordance with clauses (2) and (3) during any subsequent financial year.

(6) This Article lapses twenty years after the effective date, subject to clause (7).

(7) Parliament may enact legislation suspending the effect of clause (6) for a further fixed period of years, subject to clause (8).

(8) Legislation under clause (7) shall be supported by more than half of all the members of the National Assembly, and more than half of all the county delegations in the Senate.

(9) Money shall not be withdrawn from the Equalisation Fund unless the Controller of Budget has approved the withdrawal.

I. Simple Explanation

Article 204 establishes a special Fund — the Equalisation Fund — which takes 0.5% of all national revenue each year. The Fund is dedicated to improving basic services (water, roads, health, electricity) in marginalized or under-developed areas so that the standard of those services becomes comparable to the rest of the country. The Fund must be appropriated by Parliament, and any spending must be approved by the oversight institution (Controller of Budget). Unspent money rolls over. The Article also has a sunset clause (it lapses after 20 years unless extended).

II. Citizens' Right & Personal Impact

- **If you live in a marginalised area** — remote, historically underserved — you have a constitutional right to basic services (water, electricity, health, roads) through this Fund.
- **It gives hope for long-term uplift:** under-funded areas get dedicated resources for development.
- **As a citizen, you can demand transparency and accountability:** withdrawals from the Fund must be approved; you can ask where and how the Fund is used.
- **It helps reduce inequality between regions,** giving equal opportunity for development to all Kenyans regardless of location.

III. Real-World Example

Imagine a remote county in Northern or Coastal Kenya that has lacked piped water, electricity, or decent roads. Through the Equalisation Fund, the national government — or via conditional grants to the county — could build boreholes or water systems, electrify villages, upgrade roads, or build clinics. Over time, residents would gain access to services similar to urban areas.

Article 205 — Consultation on financial legislation affecting counties

(1) When a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate.

(2) Any recommendations made by the Commission shall be tabled in Parliament, and each House shall consider the recommendations before voting on the Bill.

I. Simple Explanation

Article 205 requires that any proposed national law (Bill) that affects county finances — e.g. revenue sharing, taxes, funds — must first be reviewed by the Commission on Revenue Allocation (CRA). The CRA gives recommendations, and Parliament must consider them before passing the Bill.

II. Citizens' Right & Personal Impact

- This ensures county interests are represented whenever national financial laws are made — important to protect local needs and prevent unfair laws.
- As a citizen, it means your county has a voice and technical input during national financial decision-making, which can influence how well funds or taxes are distributed.

- It improves transparency and accountability in national financial legislation — giving legitimacy to revenue-sharing or fiscal laws that affect how your county is funded.

III. Real-World Example

Suppose the national government proposes a new Finance Bill that changes how revenue is divided between counties — maybe reducing allocations for some counties or changing funding formulas. Under Article 205, the CRA examines the proposal, may recommend changes (e.g. protecting allocations for vulnerable counties), and Parliament must consider those recommendations before voting. This could protect counties from unfair treatment, ensuring that residents do not lose vital funding.

Article 206 — Consolidated Fund and other public funds

(1) There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that— (a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or (b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ.

(2) Money may be withdrawn from the Consolidated Fund only— (a) in accordance with an appropriation by an Act of Parliament; (b) in accordance with Article 222 or 223; or (c) as a charge against the Fund as authorised by this Constitution or an Act of Parliament.

(3) Money shall not be withdrawn from any national public fund other than the Consolidated Fund, unless the withdrawal of the money has been authorised by an Act of Parliament.

(4) Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.

I. Simple Explanation

Article 206 establishes a central treasury — the Consolidated Fund — where all national government revenues go (unless specifically earmarked). It stipulates that government can only spend money from that Fund if Parliament approves (through appropriation laws) and withdrawals are signed off by the Controller of Budget. Other public funds must also have legal authorization for withdrawal.

II. Citizens' Right & Personal Impact

- **Provides a mechanism of accountability:** no spending without parliamentary approval and oversight by the Controller of Budget — protecting public money from misuse.
- As a taxpayer, you have a right to expect that public spending is transparent, authorised, and lawful.

- It helps ensure that national projects and services (roads, hospitals, defense, salaries) are funded legally — adding legitimacy to government expenditures.

III. Real-World Example

When the national government budgets for major projects — like building a national highway, funding schools, paying public servants — the money comes from the Consolidated Fund. For example, building a new railway or paying salaries of teachers must be authorised in the national budget (Appropriation Bill), and actual disbursement must be approved by the Controller of Budget before funds are released.

Article 207 — Revenue Funds for County Governments

- (1) There shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the Revenue Fund of a county government only— (a) as a charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the county; or (b) as authorised by an appropriation by legislation of the county.
- (3) Money shall not be withdrawn from a Revenue Fund unless the Controller of Budget has approved the withdrawal.
- (4) An Act of Parliament may— (a) make further provision for the withdrawal of funds from a county Revenue Fund; and (b) provide for the establishment of other funds by counties and the management of those funds.

I. Simple Explanation

Article 207 requires that each county has its own Revenue Fund for all money the county receives (local taxes, national transfers, grants, etc.). Counties can only spend this money through lawful appropriation (county legislation) and after approval from the Controller of Budget. Parliament can make additional laws to manage these funds.

II. Citizens' Right & Personal Impact

- Ensures that county finances are managed properly and transparently — giving citizens confidence that resources meant for local development are not misused.
- Helps guarantee that local projects and services (under county mandate) are funded through a legitimate, constitutional system.
- Provides a mechanism for accountability at county level — people can demand to know how their county uses its funds.

III. Real-World Example

If your county collects property rates, business licences, and receives its share from national revenue, these funds go into the county's Revenue Fund. Suppose the county wants to build a

new health centre, pave local roads or improve water supply — it must pass a budget appropriation law and get Controller of Budget’s approval before spending. This ensures proper governance and oversight of county resources.

Article 208 — Contingencies Fund

(1) There is established a Contingencies Fund, the operation of which shall be in accordance with an Act of Parliament.

(2) An Act of Parliament shall provide for advances from the Contingencies Fund if the Cabinet Secretary responsible for finance is satisfied that there is an urgent and unforeseen need for expenditure for which there is no other authority.

I. Simple Explanation

Article 208 establishes a special fund — the Contingencies Fund — which is used for urgent, unforeseen expenditures (e.g., emergencies, disasters) when there is no other budget authority. The law determines how and when money can be drawn from this Fund.

II. Citizens’ Right & Personal Impact

- This gives the government a legal way to respond quickly to emergencies — such as natural disasters, epidemics, or urgent national needs — which can directly benefit citizens.
- As a citizen you have the right to expect rapid state response in crisis times — health emergencies, floods, disasters — through legitimate use of public funds.
- Also provides a constitutional safeguard against misuse: withdrawals from the Fund must follow the law, adding a layer of accountability.

III. Real-World Example

If a region of Kenya suffers severe flooding destroying homes or roads, the government can draw from the Contingencies Fund to provide relief, rebuild infrastructure, or distribute emergency aid — rather than waiting for the next Annual Budget, which could take months.

Article 209 — Power to Impose Taxes and Charges

(1) Only the national government may impose— (a) income tax; (b) value-added tax; (c) customs duties and other duties on import and export goods; and (d) excise tax.

(2) An Act of Parliament may authorise the national government to impose any other tax or duty, except a tax specified in clause (3)(a) or (b).

(3) A county may impose— (a) property rates; (b) entertainment taxes; and (c) any other tax that it is authorised to impose by an Act of Parliament.

(4) The national and county governments may impose charges for services.

(5) The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

I. Simple Explanation

Article 209 divides who can tax: the national government has power to levy major taxes (income tax, VAT, customs, excise), while counties can collect local taxes (property rates, entertainment taxes, others as authorised by law). Both levels may charge for services. Counties must ensure their taxes don't interfere with national economic unity.

II. Citizens' Right & Personal Impact

- You have clarity on who collects which taxes — national vs county — so you know who to pay and under what authority.
- Local taxes (county rates, service charges) are allowed — meaning local governments have resources to deliver services, but also with limits to prevent abuse.
- Protection against discriminatory or obstructive county taxation — e.g. taxes that hinder businesses or trade across counties are disallowed, which protects consumers, workers, and businesses.

III. Real-World Example

If you earn a salary or buy goods (subject to VAT), those are taxed by national government. If you own property in a county, you may pay property rates to your county. If you own a bar or run a movie theatre, you might pay county entertainment tax. A county cannot impose a bizarre new tax that would prevent goods or people from moving in or out of the county — that would be unconstitutional under Article 209.

Article 210 — Imposition of Tax

- (1) No tax or licensing fee may be imposed, waived or varied except as provided by legislation.
- (2) If legislation permits the waiver of any tax or licensing fee — (a) a public record of each waiver shall be maintained together with the reason for the waiver; and (b) each waiver, and the reason for it, shall be reported to the Auditor-General.
- (3) No law may exclude or authorise the exclusion of a state officer from payment of tax by reason of the office held by that State officer; or the nature of the work of that State officer.

I. Simple Explanation

Article 210 ensures that taxes and licensing fees can only be imposed, changed, or waived by law (i.e. properly legislated). If a waiver is granted, the government must publicly record who got it and why, and report to the Auditor-General. Also, no special tax exemptions just because someone is a public office-holder.

II. Citizens' Right & Personal Impact

- Protects all citizens (and businesses) from arbitrary taxes or fees — ensuring taxes are only imposed through law, after debate and approval.
- Promotes transparency: any waivers are public and recorded — this discourages favouritism or corruption.
- Ensures equality before the tax law: even state officials pay taxes like everyone else.

III. Real-World Example

If Parliament passes a new law increasing VAT or introducing a licensing fee for small businesses, that is legitimate. But if a government agency tries to impose a new fee without passing a law, that would be unconstitutional. If a private company is given a waiver from customs duty, the waiver must be recorded and justified publicly, and reported to the Auditor-General. And even high-ranking officials must pay taxes — no exemptions just because of their position.

Article 211 — Borrowing by National Government

- (1) Parliament may, by legislation— (a) prescribe the terms on which the national government may borrow; and (b) impose reporting requirements.
- (2) Within seven days after either House of Parliament so requests by resolution, the Cabinet Secretary responsible for finance shall present to the relevant committee, information concerning any particular loan or guarantee, including all information necessary to show— (a) the extent of the total indebtedness by way of principal and accumulated interest; (b) the use made or to be made of the proceeds of the loan; (c) the provision made for servicing or repayment of the loan; and (d) the progress made in the repayment of the loan.

I. Simple Explanation

Article 211 allows the national government to borrow money (domestic or external debt), but only under laws made by Parliament that set borrowing terms and require accountability. If Parliament wants, the finance minister must produce full details of any loan: total debt, what the money will be used for, how it will be paid back, and progress on repayment.

II. Citizens' Right & Personal Impact

- Gives citizens and representatives a right to know how much the government borrows, why, and how debt will be repaid.
- Helps prevent reckless borrowing that could burden future generations — since loans must be justified and reported.
- Makes the government accountable for debt transparency, reducing risk of hidden or dangerous debt accumulation.

III. Real-World Example

If the government decides to take a foreign loan to build or expand a major railway or highway, it must pass borrowing legislation. If a Member of Parliament asks, the Cabinet Secretary for Finance must provide full details: loan amount, interest, purpose (e.g. infrastructure), repayment plan. This enables oversight and public scrutiny — making sure borrowed money is used properly.

Article 212 — Borrowing by Counties

A county government may borrow only— (a) if the national government guarantees the loan; and (b) with the approval of the county government’s assembly.

I. Simple Explanation

Article 212 allows county governments to borrow, but only if two conditions are met: the loan is guaranteed by the national government and the county’s own assembly approves the borrowing.

II. Citizens’ Right & Personal Impact

- **This ensures checks and balances at local level:** counties cannot borrow recklessly and burden future residents without oversight.
- As a citizen, you have the right to expect that any county borrowing is justified, legitimate, and approved by your county representatives.
- Protects counties from unsustainable debt that could undermine service delivery or force higher local taxes later.

III. Real-World Example

If your county plans to build a large water-pipeline project but lacks funds, it might propose to borrow money. Under Article 212, this borrowing must get national government guarantee and county assembly approval. Once approved, the county can borrow — but the conditions ensure transparency and responsibility.

Article 213 — Loan Guarantees by National Government

- (1) An Act of Parliament shall prescribe terms and conditions under which the national government may guarantee loans.
- (2) Within two months after the end of each financial year, the national government shall publish a report on the guarantees that it gave during that year.

I. Simple Explanation

Article 213 regulates when national government guarantees a loan (e.g. for a project, a county, or entity). Parliament must set the rules under which guarantees are given. Moreover, every year the government must publicly report all guarantees provided — giving transparency.

II. Citizens' Right & Personal Impact

- As a citizen, you have the right to know when and why the national government gives guarantees — for instance, to counties or public entities borrowing money.
- It promotes financial transparency and helps public scrutiny of obligations taken on by the state.
- Limits irresponsible state-backed borrowing by ensuring all guarantees follow parliamentary law and get public reporting.

III. Real-World Example

Suppose a county or public corporation wants to borrow money for a major development project (like a water scheme or industrial park). If the national government guarantees that loan, the terms must follow legal rules. After the end of the financial year, the government must list that guarantee in a report — citizens (or watchdogs) can see it, track the financial obligations, and monitor repayment or performance.

Article 214 — Public Debt

(1) The public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds.

(2) For the purposes of this Article, “the public debt” means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.

I. Simple Explanation

Article 214 defines public debt (all obligations from loans and securities issued or guaranteed by the national government) and states that public debt must be serviced (paid) from the Consolidated Fund — unless Parliament passes a law assigning debt to another public fund.

II. Citizens' Right & Personal Impact

- As a citizen and taxpayer, you have the right to know that national debt is public responsibility and must be handled transparently.
- Ensures that debt repayment comes from public funds under constitutional control — reducing risk of hidden liabilities affecting public finance and services.
- Gives a basis to demand accountability on debt load and management — vital especially if debt servicing eats up large portion of national budget.

III. Real-World Example

If Kenya borrows (domestic or external) to fund infrastructure or social projects, this debt becomes “public debt.” When repayments (principal + interest) are due, they must be drawn from the Consolidated Fund. Suppose the government issues bonds or guarantees loans — those also count. If debt becomes too big, it may limit future budgets for services (like health, education), affecting citizens. Article 214 ensures these obligations are recognised legally, making it easier for oversight, debate, and accountability.

ARTICLE 215 — Commission on Revenue Allocation (CRA)

215. Commission on Revenue Allocation

- (1) There is established the Commission on Revenue Allocation.
- (2) The Commission shall consist of—
 - (a) a chairperson;
 - (b) one person each nominated by each of the following bodies from among persons who are not members or employees of those bodies—
 - (i) the Parliamentary Service Commission;
 - (ii) the Kenya Law Reform Commission;
 - (iii) the National Gender and Equality Commission; and
 - (c) the Principal Secretary responsible for finance.
- (3) The members of the Commission shall be appointed by the President with the approval of the National Assembly.

I. Simple Explanation

CRA advises how money should be shared between national and county governments.

II. Citizens’ Right & Personal Impact

- Ensures fairness in revenue distribution.
- Protects counties from political bias.
- Ensures marginalised areas receive appropriate funding.

III. Real-World Example

Before revenue sharing every year, CRA provides a formula used by Parliament to distribute billions to counties.

Article 216 — Functions of the CRA

216. Functions of the Commission on Revenue Allocation

- (1) The principal function of the Commission shall be to make recommendations concerning the basis for equitable sharing of revenue raised nationally.
- (2) The Commission shall also—
 - (a) make recommendations on matters concerning the financing of, and financial management by, county governments; and
 - (b) define and enhance the revenue sources of national and county governments.

I. Simple Explanation

CRA designs the revenue-sharing formula and advises counties on financial management.

II. Citizens' Right & Personal Impact

- Protects counties from underfunding.
- Helps counties manage money better.
- Ensures fairness and equity.

III. Real-World Example

CRA recommended giving more weight to poverty levels in the revenue-sharing formula, which increased allocations to poorer counties.

Article 217 — Revenue Allocation Among Counties

217. Division of revenue among counties

- (1) Once every five years, the Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.
- (2) The Senate may amend the basis of allocation during the five-year period.
- (3) The Senate resolution shall be supported by at least two-thirds of its members.

I. Simple Explanation

Every five years, the Senate sets the formula used to divide money among all 47 counties.

II. Citizens' Right & Personal Impact

- Guarantees predictable funding for counties.
- Prevents unfair political manipulation.
- Ensures that changes in county needs are considered.

III. Real-World Example

The 2020 revenue formula increased allocations for counties with larger populations and urban centers.

Article 218 — Annual Division and Allocation of Revenue Bills

218. Annual Division and Allocation of Revenue Bills

(1) At least two months before the end of each financial year, there shall be introduced in Parliament—

(a) a Division of Revenue Bill; and

(b) a County Allocation of Revenue Bill.

(2) Each Bill shall be accompanied by a memorandum that explains—

(a) how it takes into account the principles of Article 201;

(b) any significant deviation from the Commission's recommendations; and

(c) any assumptions underlying the Bills.

I. Simple Explanation

Each year, two laws must be passed:

- One divides money between national and county governments
- The other divides money among counties

II. Citizens' Right & Personal Impact

- Ensures transparency in national budgeting.
- Guarantees counties receive their share on time.
- Ensures CRA recommendations are considered.

III. Real-World Example

Before counties receive funds each year, Parliament passes the **County Allocation of Revenue Act (CARA)** based on this Article.

Article 219 — County Allocation from National Revenue Guaranteed

I. Article

219. County allocation from national revenue guaranteed

A county's share of revenue raised nationally shall be transferred to the county without undue delay and without deduction.

I. Simple Explanation

Counties must receive their allocated money on time and in full.

II. Citizens' Right & Personal Impact

- Prevents national government from withholding funds to punish counties.
- Ensures county services run smoothly — salaries, health, public works.

III. Real-World Example

Nairobi County must receive its funds even if the governor disagrees politically with the national government.

Article 220 — Form, Content, and Timing of Budgets

220. Form, content and timing of budgets

(1) Budgets of the national and county governments shall contain—

- (a) estimates of revenue and expenditure;
- (b) proposals for financing any deficit; and
- (c) proposals regarding borrowing and other debts.

(2) National legislation shall prescribe—

- (a) when national and county governments shall prepare and adopt their budgets; and
- (b) the form and manner in which budgets shall be prepared.

I. Simple Explanation

Government budgets must be detailed and follow laws on timing and structure.

II. Citizens' Right & Personal Impact

- Ensures transparency in planning.
- Prevents hidden expenses.
- Makes public participation easier because budgets are structured clearly.

III. Real-World Example

The National Treasury must prepare the budget policy statement by February each year.

Article 221 — Budget Estimates and Parliamentary Approval

221. Budget estimates and parliamentary approval

- (1) At least two months before the end of each financial year, the Cabinet Secretary for finance shall submit to the National Assembly estimates of revenue and expenditure for the next financial year.
- (2) The National Assembly shall consider the estimates and may approve, amend or refuse to approve them.

I. Simple Explanation

Parliament must approve the national budget before money is spent.

II. Citizens' Right & Personal Impact

- Protects public money from misuse.
- Allows MPs to represent citizens' interests in budget debates.
- Prevents the executive from spending without oversight.

III. Real-World Example

When the government proposes funding for NHIF, school feeding, or road construction, Parliament must approve the amounts.

Article 222 — Appropriation in Advance of Appropriation Act

222. Appropriation in advance of Appropriation Act

- (1) If the Appropriation Act is not passed by the start of the financial year, the National Assembly may authorise spending for up to six months.
- (2) The spending authorised shall not exceed 50 percent of the previous year's budget.

I. Simple Explanation

If Parliament delays the budget, the government can still function temporarily.

II. Citizens' Right & Personal Impact

- Prevents shutdown of essential services.
- Guarantees salaries for teachers, nurses, police, etc.

III. Real-World Example

If the budget is late, government departments can still operate using temporary funds.

Article 223 — Supplementary Appropriation

223. Supplementary appropriations

- (1) The national government may spend money that has not been appropriated if—
 - (a) the expenditure cannot be postponed; and
 - (b) a supplementary estimate is submitted to Parliament within two months.
- (2) Parliament may approve or reject the additional spending.

I. Simple Explanation

Allows emergency unplanned spending, but Parliament must approve it shortly after.

II. Citizens' Right & Personal Impact

- Prevents misuse of emergency spending powers.
- Keeps borrowing and expenditure controlled.

III. Real-World Example

During COVID-19, the government used supplementary budgets for emergency health supplies.

Article 224 — County Budgets and Appropriations

224. County budgets and appropriations

On the basis of the Division of Revenue Act and the County Allocation of Revenue Act, each county shall prepare a budget and pass appropriation laws for the expenditure of the funds.

I. Simple Explanation

Counties must create their own budgets based on money allocated by national laws.

II. Citizens' Right & Personal Impact

- Guarantee that citizens can participate in county budgeting.
- Ensures counties spend within their means.

III. Real-World Example

Your county prepares its annual budget after the Senate passes the revenue-sharing laws.

Article 225 — Financial Control

225. Financial control

- (1) An Act of Parliament shall provide for the establishment, functions and responsibilities of an entity to ensure control of public money.
- (2) Parliament shall enact legislation to ensure—
 - (a) both levels of government maintain proper financial records; and
 - (b) reports are made to Parliament as required by law.

I. Simple Explanation

Provides for laws that ensure strict control, oversight, and reporting of public money.

II. Citizens' Right & Personal Impact

- Protects citizens from corruption.
- Ensures financial audits are done properly.
- Ensures accountability at both national and county levels.

III. Real-World Example

The Public Finance Management Act (PFM Act) was created under this Article.

Article 226 — Accounts and Audit of Public Entities

226. Accounts and audit of public entities

- (1) An Act of Parliament shall provide for—
 - (a) the keeping of financial records; and
 - (b) the auditing of accounts of all government entities.
- (2) The accounts of all public entities shall be audited by the Auditor-General.
- (3) If the Auditor-General confirms that money has been used unlawfully, the responsible person shall be required to repay it.

I. Simple Explanation

Every government body must keep proper accounts, which must be audited by the Auditor-General.

II. Citizens' Right & Personal Impact

- Protects citizens from theft of public funds.
- Ensures transparency in how money is used.
- Forces corrupt officials to repay money lost through illegal use.

III. Real-World Example

If the Auditor-General finds that a county used Sh50 million unlawfully, the officials responsible can be required to pay it back.

Article 227: legislation on procurement

227. (1) There shall be an independent body to regulate public procurement and disposal of public assets.

(2) All procurement and disposal of public assets by the State and all public entities shall be carried out in a system that is fair, equitable, transparent, competitive and cost-effective.

I. Simple Explanation

Article 227 mandates the creation of a stringent, transparent system for government purchases (procurement) and the sale of assets.

1. **Independent Regulator:** Parliament must establish an independent body (Public Procurement Regulatory Authority - PPRA) to regulate all government procurement.
2. **Mandatory Principles:** All procurement (buying) and disposal (selling) of public assets must be governed by a system that is fair, equitable, transparent, competitive, and cost-effective.

II. Citizen's Right & Personal Impact

- **Protection from Corruption:** The principles in Clause (2) are the constitutional standard for preventing corruption and ensuring that public money is used efficiently and that contracts are awarded fairly, not through bribery or favoritism.
- **Right to Equal Opportunity:** If you own a business, this article ensures that the process for competing for a government tender is fair and competitive.

III. Real-World Example

- **Scenario:** A County Executive Committee awards a large construction tender to a single company without opening the process to a competitive tender.
- **Action based on Article 227(2):** A rival bidder challenges the award. The court rules the tender invalid because the process violated the mandatory constitutional requirement for a transparent, competitive, and cost-effective system.
- **Result:** This article is the foundation for all modern procurement laws aimed at eliminating corruption in government contracts.

Article 228: Controller of Budget

228. (1) There is established the office of Controller of Budget (CoB).

(2) The CoB shall be nominated by the President, with the approval of the National Assembly, and appointed by the President.

(4) The CoB may be removed from office by the President only for just cause and in accordance with the procedure set out in Article 228(7).

(5) The CoB shall oversee the implementation of the budgets of the national and county governments.

(6) The CoB shall not authorise the withdrawal of any funds from public funds unless satisfied that the money is legally available and has been legally appropriated.

I. Simple Explanation

Article 228 formally establishes the Controller of Budget (CoB) and reinforces the CoB's critical role as the constitutional guardian of public funds.

1. **Appointment and Tenure:** Appointed by the President with National Assembly approval and protected by a removal process based on just cause (similar to the AG/DPP), ensuring independence.
2. **Oversight and Control:** The CoB oversees the implementation of the budgets (national and county) and must not authorize any withdrawal of funds unless it is legally appropriated (budgeted for).

II. Citizen's Right & Personal Impact

- **Right to Legal Spending:** This ensures that the Executive (President and Governors) cannot spend a single shilling without the CoB verifying that the spending was approved by the respective Parliament/Assembly.

III. Real-World Example

- **Scenario:** A ministry attempts to withdraw funds for a project that the National Assembly had rejected during the budget process.
- **Action based on Article 228(6):** The CoB refuses to authorize the withdrawal, protecting the Consolidated Fund.
- **Result:** The CoB's independence is the final barrier against illegal executive spending.

Article 229: Auditor-General

229. (1) There is established the office of Auditor-General (AG).

(2) The AG shall be nominated by the President with the approval of the National Assembly.

(4) The AG may be removed from office by the President only for just cause and in accordance with the procedure set out in Article 228(7).

(5) The AG shall audit and report on the accounts of every State organ and public entity.

(6) The AG has power to confirm whether money has been spent lawfully and in an effective way (performance audit).

(7) The AG shall submit reports to Parliament or the relevant County Assembly.

I. Simple Explanation

Article 229 formally establishes the Auditor-General (AG), the supreme constitutional auditor who provides accountability to the people.

1. **Appointment and Tenure:** Appointed by the President with National Assembly approval and protected by a removal process based on just cause, ensuring independence.
2. **Audit Mandate (Clause 5 & 6):** The AG not only audits whether money was spent legally (*lawfulness*) but also whether it was spent efficiently and in an effective way (*effectiveness* or performance audit).

II. Citizen's Right & Personal Impact

- **Right to Performance Audit:** This ensures that the AG checks if the Ksh 1 billion spent on a project actually delivered a functioning road or hospital, or if the money was wasted.
- **Transparency:** The AG's report is the primary source of public information regarding the integrity and effectiveness of all government spending.

III. Real-World Example

- **Scenario:** The Auditor-General's report investigates why a newly built school, despite being fully paid for, remains incomplete.
- **Action based on Article 229(6):** The AG reports that the money was not spent in an effective way, even if it was spent "lawfully."
- **Result:** This audit forces Parliament and the County Assembly to demand accountability from the responsible officials for the failed project.

Article 230: Salaries And Remuneration Commission (SRC)

230. (1) There is established the Salaries and Remuneration Commission (SRC).

(2) The SRC shall consist of a chairperson and eight other members appointed by the President, with the approval of the National Assembly.

(4) The functions of the SRC are;

(a) to set and regularly review the remuneration and benefits for all State officers; and

(b) to advise the national and county governments on the remuneration and benefits of all other public officers.

(5) In performing its functions, the SRC shall ensure that the total public compensation bill is fiscally sustainable and that there is fairness and transparency.

I. Simple Explanation

Article 230 establishes the Salaries and Remuneration Commission (SRC) as the independent constitutional body that controls the pay of all public servants.

1. **Independent Pay Setter:** The SRC is the only body with the power to set and review the salaries and benefits for all State Officers (President, MPs, Governors, Judges, etc.).
2. **Advisory Role:** It advises the government on the pay of all other public officers (teachers, police, civil servants).
3. **Guiding Principles:** The SRC must ensure that the total national pay bill is fiscally sustainable (affordable) and that pay is determined with fairness and transparency.

II. Citizen's Right & Personal Impact

- **Protection from Self-Setting Pay:** This is the constitutional check that prevents MPs, Governors, and other State Officers from voting to increase their own salaries, as the final power rests with the independent SRC.
- **Fiscal Responsibility:** The SRC's mandate ensures that the cost of public service is managed responsibly so that taxpayers' money is not entirely consumed by salaries.

III. Real-World Example

- **Scenario:** MPs demand a massive increase in their travel allowances and vote to approve it in the National Assembly.
- **Action based on Article 230(4)(a):** The SRC rules that the MPs' vote is advisory only, as the power to set and review remuneration for State Officers belongs **exclusively** to the SRC.
- **Result:** The SRC sets the final, legally binding pay structure, ensuring accountability to the taxpayer.



“Public money must be accounted for. That is not optional – It is constitutional.” –
Edward Ouko, Former Auditor General

Chapter Thirteen: The Public Service

which sets the high professional and ethical standards for all civil servants and public officers. This is the first article in **Chapter Thirteen: The Public Service**.

Article 231: Values and Principles of the Public Service

231. (1) The **values and principles** set out in Article 10 and 232 shall apply to the public service.

(2) The public service shall be characterized by a **high standard of ethics, efficiency, and effectiveness**.

(3) The public service shall be responsible for—

(a) **policy implementation** at both the national and county levels;

(b) **accountability** for its actions and decisions;

(c) the **efficient, effective, and economical use of resources**; and

(d) **development of human resources** (staff) and the promotion of **diversity and equity** in recruitment.

I. Simple Explanation

Article 231 mandates that the entire body of civil servants (the **Public Service**) must operate under the highest standards of integrity, efficiency, and public accountability.

1. **Binding Principles:** The public service must adhere to the **National Values** (Article 10—e.g., integrity, transparency, patriotism) and the **principles of the public service** (Article 232).
2. **Standards:** The service must show a **high standard of ethics, efficiency, and effectiveness**.
3. **Core Duties:** The civil service's job is to **implement government policy** (national and county), be **accountable** for its actions, use public money **efficiently and economically**, and ensure that its staff recruitment promotes **diversity and equity**.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Quality Service	You have the right to demand that the civil servants you interact with (e.g., at the local government office, the hospital, or the police station) act professionally, ethically, efficiently, and without demanding bribes.
Right to Merit and Diversity	This ensures that recruitment into the civil service (national or county) must be based on merit and must reflect the diversity of the Kenyan people (ethnic, gender, regional).
Protection from Waste	The requirement for efficient, effective, and economical use of resources ensures that civil servants are accountable for misuse or waste of public property.

III. Real-World Example

- **Scenario:** A County Public Service Board advertises job openings but only hires people from one specific ethnic group.
- **Action based on Article 231(3)(d):** A job applicant from a different group challenges the recruitment process, arguing that the Board failed its constitutional duty to promote **diversity and equity** in recruitment.
- **Result:** The courts would likely annul the recruitment process, compelling the Board to readvertise the positions and ensure the final list reflects the constitutional standard of national and regional diversity.

Article 232: General Principles of the Public Service

232. (1) The values and principles of the public service include—

- (a) **high standards of professional ethics;**
- (b) **efficient, effective, and economical use of resources;**
- (c) a system of fair competition and **merit** as the basis of appointments and promotions;
- (d) **representation of Kenya's diverse communities;**
- (e) affording **adequate and equal opportunities** for appointment, training, and advancement of **both men and women** and **members of all ethnic groups;**
- (f) **accountability** for administrative acts;
- (g) **transparency and provision of timely, accurate information** to the public;
- (h) subject to Article 31, **timely response** to public needs; and
- (i) **affording the public a clear opportunity to participate** in the policy-making process.

I. Simple Explanation

Article 232 provides a detailed, explicit list of nine **operational principles** that govern the behaviour, recruitment, and management of the entire public service.

1. **Recruitment and Diversity:** All appointments must be based on **merit** and must ensure adequate and equal opportunities for **men and women** and **all ethnic groups** (Clause 1c, d, e).
2. **Efficiency and Transparency:** The service must be **efficient** in its use of money, be **accountable** for its decisions, and provide the public with **timely, accurate information** (Clause 1b, f, g).
3. **Public Input:** The public service must afford the public a **clear opportunity to participate** in the policy-making process (Clause 1i).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Merit-Based System	You are protected from political patronage in the civil service. Recruitment and promotions must be based on merit and fair competition.
Right to Information	You can demand that government agencies provide you with timely, accurate information about services or policies, and you can challenge undue secrecy.
Right to Participate in Policy	If a ministry is developing a new policy (e.g., on water distribution), you have the right to demand they hold a public forum to receive your input.

III. Real-World Example

- **Scenario:** A citizen applies for a government job and is the most qualified candidate, but the job is given to a less qualified relative of a senior official.
- **Action based on Article 232(1)(c):** The citizen challenges the appointment, arguing that the public service failed its constitutional duty to base appointments on **fair competition and merit**.
- **Result:** The courts and the Public Service Commission (PSC) have used this article to annul appointments based on favouritism, ensuring that the civil service remains competent and fair.

Article 233: Public Service Commission

233. (1) There is established the **Public Service Commission (PSC)**.

(2) The PSC shall consist of a **chairperson** and **eight other members** appointed by the President, with the approval of the National Assembly.

(3) The commission shall **reflect the regional and ethnic diversity of the people of Kenya**.

I. Simple Explanation

Article 233 establishes the **Public Service Commission (PSC)**, the independent constitutional body that manages the human resources of the entire national civil service.

1. **Composition and Appointment:** The PSC is an independent body led by a **chairperson** and **eight other members**, all requiring National Assembly approval.
2. **Diversity Mandate:** The composition of the **PSC itself** must **reflect the regional and ethnic diversity of Kenya** (Clause 3). This is essential so that the body responsible for enforcing diversity (Article 232) is itself diverse.

II. Citizen's Right & Personal Impact

- **Right to Independent Management:** The PSC's independence ensures that recruitment, promotions, and disciplinary actions within the civil service are managed professionally, not politically.
- **Protection from Bias:** The diversity requirement ensures that the body managing national employment practices is free from regional or ethnic bias in its decisions.

III. Real-World Example

- **Scenario:** The President appoints a new set of PSC Commissioners, all of whom come from two neighbouring counties.
- **Action based on Article 233(3):** A Member of Parliament or a civil society group challenges the appointments before the National Assembly's vetting committee. They argue that the composition fails to **reflect the regional and ethnic diversity** of Kenya.
- **Result:** The National Assembly would be compelled to reject the list and demand a new one that is geographically and ethnically representative, ensuring the integrity of the PSC.

Article 234: Functions of the Public Service Commission

234. (1) The functions of the PSC are—

- (a) to establish and abolish offices in the public service;
- (b) to **appoint persons to hold office** in the public service, and to **confirm appointments**;
- (c) to **exercise disciplinary control** over and **remove** persons holding office;
- (d) to **review and make recommendations on the conditions of service, job descriptions and qualifications**;
- (e) to evaluate the **performance** of the public service;
- (f) to **promote the values and principles** of Articles 10 and 232.

(2) The PSC shall **not exercise its powers** in relation to the office of the **Attorney-General, the Controller of Budget, the Auditor-General, and County Government staff**.

(3) The PSC may **delegate** any of its functions to any of its members, to a body, or to a public officer.

I. Simple Explanation

Article 234 details the vast human resource powers of the **PSC** over the entire national civil service, essentially acting as the nation's chief HR department.

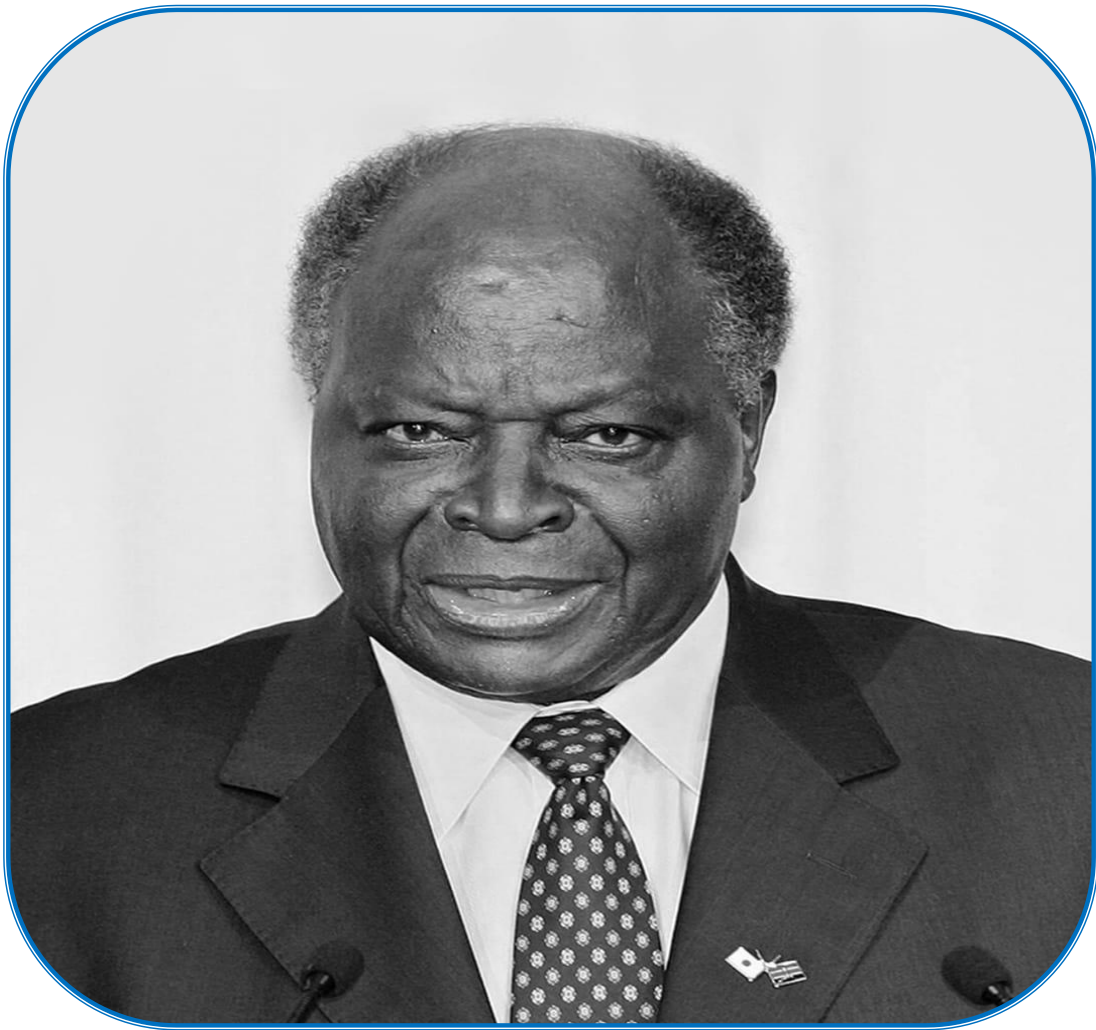
1. **HR Management (Clauses 1b, c, d):** The PSC hires, promotes, sets job descriptions, disciplines, and fires all civil servants (excluding certain independent offices).
2. **Performance and Principles (Clauses 1e, f):** It evaluates the **performance** of the public service and enforces the constitutional **values and principles** (merit, diversity, ethics).
3. **Exclusions (Clause 2):** To protect the independence of other constitutional offices, the PSC **cannot exercise its powers** over the staff of the Judiciary, the County Governments, or the office holders of the AG, CoB, or Auditor-General.
4. **Delegation (Clause 3):** The PSC can **delegate** routine functions to ministries or senior officers to ensure efficient administration.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Fair Employment	If you are a civil servant, this article ensures that all decisions regarding your career (hiring, promotion, firing) are subject to the independent, professional rules of the PSC, protecting you from political interference.
Effective Public Service	The PSC's mandate to evaluate performance and enforce discipline ensures that the civil service remains professional, competent, and accountable to the public.

III. Real-World Example

- **Scenario:** A public servant is unfairly dismissed by their Principal Secretary without a fair hearing.
- **Action based on Article 234(1)(c):** The public servant appeals the dismissal directly to the **PSC**.
- **Result:** The PSC investigates the appeal. Since the PSC has the constitutional power to **exercise disciplinary control and remove** persons from office, it can overturn the PS's decision if it finds the dismissal was unprocedural or unfair.



“Leadership is a privilege to better the lives of others. It is not an opportunity to satisfy personal greed.” – Mwai Kibaki

Chapter Fourteen: National Security

Here is the breakdown for **Article 238: Principles of national security**, which sets the fundamental standards and ethical framework for all security organs in Kenya. This is the first article in **Chapter Fourteen: National Security**.

Article 238: Principles of National Security

238. (1) National security is the **protection of the nation and its citizens** against internal and external threats, and in furtherance of the national interest.

(2) The national security of Kenya shall be **pursued in compliance with the law** and with the **utmost respect for the rule of law, democracy, human rights and fundamental freedoms**.

(3) In performing their functions and exercising their powers, the organs and agencies of national security shall be **governed by the national security principles** set out in clause (4).

(4) The national security organs shall be subordinate to **civilian authority**.

I. Simple Explanation

Article 238 defines **national security** not just as a military function, but as a system of protecting citizens and the nation while strictly adhering to the Constitution and respecting human rights.

1. **Purpose (Clause 1):** The primary purpose of security forces is the **protection of the nation and its citizens** from all threats (internal and external).
2. **Constitutional Compliance (Clause 2):** This is the most crucial principle: all security operations **must comply with the law** and be conducted with **utmost respect for the rule of law, democracy, and human rights**. This bans arbitrary action by security organs.
3. **Civilian Authority (Clause 4):** All national security organs (Police, Defence Forces, Intelligence) are **subordinate to civilian authority** (the President, Cabinet, and Parliament). This prevents the military from taking over governance.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection from Abuse	This is your guarantee that the police, military, or intelligence agencies cannot violate your human rights (Article 29, 31, 49) under the guise of "security." Security must be rights-compliant.
Right to Democracy	The subordination to civilian authority ensures that the armed forces do not interfere in political affairs or overthrow a democratically elected government.
Accountability	You can challenge any security operation that fails to comply with the law or violates fundamental freedoms.

III. Real-World Example

- **Scenario:** During a counter-terrorism operation, a military unit occupies a village and begins arresting residents arbitrarily without warrants.
- **Action based on Article 238(2):** A human rights group challenges the action. They argue that the security operation, while legitimate in purpose, is illegal because it is **not pursued in compliance with the law** and lacks **utmost respect for human rights and fundamental freedoms** (e.g., right to fair hearing, freedom and security of person).
- **Result:** The court would compel the military to cease the illegal detentions and abide strictly by the civilian law, affirming the supremacy of the Constitution over military operations.

Article 239: National Security Organs

239. (1) The national security organs are—

- (a) the **Kenya Defence Forces (KDF)**;
- (b) the **National Intelligence Service (NIS)**; and
- (c) the **National Police Service (NPS)**.

(2) The primary object of the national security organs is to **promote and guarantee national security** in accordance with the principles set out in Article 238.

(3) In the performance of their functions, the national security organs shall **not act in a manner that prejudices the fundamental freedoms or other rights** of any person.

I. Simple Explanation

Article 239 explicitly names the three principal organs responsible for national security and reiterates the ban on those organs violating human rights.

1. **Three Organs (Clause 1):** The security structure is composed of: the **KDF** (military), the **NIS** (intelligence gathering), and the **NPS** (internal security and law enforcement).
2. **Rights Protection (Clause 3):** This is a mandatory prohibition: the security organs **shall not act in a manner that prejudices the fundamental freedoms or other rights** of any person.

II. Citizen's Right & Personal Impact

- **Clarity of Authority:** You know exactly which State organs are responsible for security.
- **Protection against Abuse:** This clause reinforces the idea that the KDF, NIS, and NPS are all **constitutionally constrained** against rights violations, regardless of their operational duties.

III. Real-World Example

- **Scenario:** The NIS is found to be illegally wiretapping the communications of political opponents without a court order.
- **Action based on Article 239(3):** A petition is filed, citing the violation of the right to privacy (Article 31).
- **Result:** The court would declare the action unconstitutional, ruling that the NIS acted in a manner that **prejudiced the fundamental freedoms** of the person, compelling the intelligence service to operate under strict legal oversight.

Article 240: National Security Council

240. (1) There is established the **National Security Council (NSC)**.

(2) The NSC shall consist of—

(a) the **President**, who shall be the chairperson;

(b) the **Deputy President**;

(c) the **Cabinet Secretary responsible for defence, foreign affairs, and internal security**;

(d) the **Attorney-General**;

(e) the **Chief of the Kenya Defence Forces, the Director-General of the NIS, and the Inspector-General of the National Police Service**; and

(f) the **Secretary to the Cabinet**, who shall be the secretary.

(3) The NSC shall **exercise supervisory control over national security organs** and perform any other functions prescribed by national legislation.

(4) The NSC shall be **accountable to Parliament**.

I. Simple Explanation

Article 240 establishes the **National Security Council (NSC)** as the supreme body for coordinating and directing national security policy.

1. **Composition:** The NSC is composed of the highest leaders from the **Executive** (President, DP, relevant Cabinet Secretaries), the **legal arm** (AG), and the **heads of all security organs** (KDF, NIS, NPS). The President chairs the Council.
2. **Supervisory Role:** The NSC's job is to **exercise supervisory control** over the three security organs, ensuring their activities are coordinated and align with national policy.
3. **Accountability:** The NSC is **accountable to Parliament**, ensuring democratic oversight of the nation's security strategy.

II. Citizen's Right & Personal Impact

- **Right to Coordinated Security:** This ensures that the police, military, and intelligence services do not work in isolation but operate under a unified, strategic command.
- **Protection of Civilian Supremacy:** The NSC, which is led by the civilian President and includes the AG and Cabinet Secretaries, reinforces the principle that security organs are **subordinate to civilian authority** (Article 238).

III. Real-World Example

- **Scenario:** Kenya faces a severe drought leading to resource conflicts and cross-border banditry that requires a coordinated response.
- **Action based on Article 240(3):** The NSC meets, chaired by the President. It directs the **KDF** to support the **NPS** in securing the border areas and directs the **NIS** to provide intelligence on the conflict flashpoints.
- **Result:** The NSC provides the high-level coordination required for a unified response to a multi-faceted security threat.

Article 241: Kenya Defence Forces

241. (1) There are established the **Kenya Defence Forces (KDF)**, which shall consist of the Army, the Air Force, and the Navy.

(2) The KDF shall be responsible for—

(a) **defending and protecting the sovereignty and territorial integrity of the Republic;**

(b) **assisting and cooperating** with the police in situations of **emergency** or **disaster**, and to **restore peace** in any part of Kenya affected by unrest; and

(c) performing any other function conferred by law.

(3) The KDF shall be **subordinate to civilian authority**.

(4) No person shall raise an **armed force** except as authorised by this Constitution or an Act of Parliament.

I. Simple Explanation

Article 241 establishes the **Kenya Defence Forces (KDF)** as the professional military arm of the State and defines its limited constitutional roles.

1. **Core Mandate (Clause 2a):** The primary duty is external—**defending and protecting the sovereignty and territorial integrity** of Kenya (borders, air, and sea).
2. **Internal Role (Clause 2b):** The KDF can only be deployed internally to **assist and cooperate with the Police** during **emergencies, disasters, or to restore peace** from unrest. Military involvement in civilian affairs is highly restricted.
3. **Civilian Supremacy (Clause 3):** The KDF is explicitly and legally **subordinate to civilian authority**.
4. **No Private Armies (Clause 4):** It explicitly bans any person from raising a **private armed force** (reinforcing Article 91 on paramilitary groups).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to National Protection	This guarantees that the nation has a professional military dedicated to defending its borders and sovereignty.
Protection from Military Rule	The clause on subordination to civilian authority is the ultimate safeguard against a military coup or military interference in democratic politics.
Limits on Internal Deployment	The KDF cannot be used for routine police work. They can only be called in during severe internal crises (emergency/disaster) to assist the police.

III. Real-World Example

- **Scenario:** Following severe flooding, the civilian government is overwhelmed and cannot reach citizens trapped by rising waters.
- **Action based on Article 241(2)(b):** The President orders the **KDF** to deploy its air and naval assets to **assist and cooperate with the police** in the **disaster** relief operation.
- **Result:** The deployment is constitutionally valid because it falls within the military's mandated internal role of assisting during a disaster and is subordinate to the civilian Executive.

Article 242: National Intelligence Service

242. The **National Intelligence Service (NIS)** shall be established as a national security organ in accordance with Article 239, with the mandate to **gather, analyse, and disseminate national security intelligence**.

I. Simple Explanation

Article 242 formally establishes the **National Intelligence Service (NIS)** and defines its single, specialized mandate.

1. **Mandate:** The NIS's sole job is to **gather, analyse, and disseminate national security intelligence**. It is not a law enforcement or military body.

II. Citizen's Right & Personal Impact

- **Right to Security Threat Identification:** The NIS is responsible for providing early warning on threats like terrorism, espionage, or internal instability, allowing the government to take pre-emptive action to protect citizens.
- **Check on Intelligence Operations:** The NIS's mandate is constrained by the Bill of Rights (Article 239), meaning it requires court oversight (warrants) for intrusive actions like wiretapping (Article 31).

III. Real-World Example

- **Scenario:** The NIS detects a plot to smuggle dangerous weapons into the country.
- **Action based on Article 242:** The NIS **gathers and analyses** the intelligence and then **disseminates** it to the National Police Service (NPS) and the KDF to intercept the weapons.
- **Result:** The NIS acts as the vital information hub, ensuring national security actions are based on verified data.

Article 243: National Police Service

243. (1) There is established the **National Police Service (NPS)**, which shall consist of the **Kenya Police Service** and the **Administration Police Service**.

(2) The NPS shall be under the **command of the Inspector-General** of the National Police Service.

(3) The NPS shall—

- (a)** exercise **police powers** and functions as provided by law;
- (b)** be **responsive to the needs of all members of society**; and
- (c)** promote **community policing** and partnership with the community.

(4) The NPS shall be **national in character** and **maintain a presence in every county**.

I. Simple Explanation

Article 243 establishes the **National Police Service (NPS)** as the primary internal law enforcement organ and mandates specific standards of community responsiveness and presence.

1. **Composition:** The NPS is a single national service composed of the two branches: the **Kenya Police Service (KPS)** and the **Administration Police Service (APS)**.
2. **Command:** The entire service is commanded by the **Inspector-General (IG)**.
3. **Community Focus (Clause 3b & c):** The police must be **responsive to the needs of all members of society** and actively promote **community policing** (partnering with local residents to solve crime).
4. **National Presence:** The NPS must have a **presence in every county**, ensuring uniform law enforcement across the country.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Law Enforcement	The NPS is constitutionally mandated to exercise police powers (e.g., arrest, maintain order) to protect your safety and property.
Right to Responsive Police	You can demand that the police service actively engage with your community and be responsive to the local security needs, moving away from a command-and-control structure.
National Law Uniformity	The national character ensures that law enforcement is carried out uniformly across all 47 counties.

III. Real-World Example

- **Scenario:** A community suffers from high rates of petty crime but police patrols are infrequent.
- **Action based on Article 243(3)(c):** Community leaders petition the IG to implement the constitutional principle of **community policing** and partnership with the community.
- **Result:** The police service is constitutionally required to establish formal structures (e.g., community policing committees) to address the community's needs, fulfilling the mandated shift toward a service-oriented police force.

Article 244: Functions of the National Police Service

244. The National Police Service shall—

- (a) **strive for the highest standards of professionalism and discipline** among its members;
- (b) prevent corruption and promote **transparency and accountability**;
- (c) comply with **constitutional standards of human rights and fundamental freedoms**;
- (d) **train staff to the highest possible standards** of competence and integrity;

- (e) **foster and promote good relations with the community**; and
- (f) respect the **diversity of the people** and **observe impartiality** and gender balance.

I. Simple Explanation

Article 244 sets the explicit **ethical and professional standards** that the National Police Service must adhere to, transforming it from a force of control into a service of public protection.

1. **Professionalism and Ethics (Clauses a, b, d):** The police must strive for the **highest standards of professionalism, discipline, and training**. They must actively **prevent corruption** and promote **transparency**.
2. **Rights Compliance (Clause c):** The police must **comply with constitutional standards of human rights** and fundamental freedoms in every action they take.
3. **Community and Diversity (Clauses e, f):** They must **foster good relations with the community, respect diversity, and observe impartiality** and gender balance.

II. Citizen's Right & Personal Impact

- **Right to Rights-Compliant Police:** This is your constitutional right to expect police officers to respect your rights during arrest, detention, and questioning (Article 49).
- **Right to Transparent Service:** You can demand that the police be **transparent and accountable** for their actions and decisions, particularly regarding the use of force.

III. Real-World Example

- **Scenario:** A police officer uses excessive force to disperse a peaceful crowd.
- **Action based on Article 244(c):** The officer's actions are a direct violation of the constitutional requirement to **comply with constitutional standards of human rights and fundamental freedoms** (e.g., Article 29 on freedom from violence).
- **Result:** The officer is subject to disciplinary action and potential criminal charges, with the law demanding the **highest standards of professionalism and discipline**.

Article 245: Command of the National Police Service

245. (1) The Inspector-General (IG) is appointed by the President with the approval of Parliament.

(2) The IG shall exercise independent command over the National Police Service and perform any other functions prescribed by national legislation.

(4) The Cabinet Secretary responsible for police matters may give a direction to the Inspector-General with respect to matters of policy.

(5) The Cabinet Secretary shall not give a direction to the Inspector-General with respect to—

- (a) the investigation of any offence or the enforcement of the law; or**

(b) the **employment, assignment, promotion, or discipline** of any member of the NPS.

I. Simple Explanation

Article 245 defines the command structure of the NPS, establishing the **Inspector-General (IG)** as the operational commander while ensuring the IG is politically neutral.

1. **IG Command (Clause 2):** The IG has **independent command** over the Police Service.
2. **Political Interference Banned (Clause 5):** The civilian Cabinet Secretary (CS) **cannot** interfere with the IG's core duties:
 - **No interference in investigations** (preventing political cover-ups).
 - **No interference in HR/disciplinary matters** (ensuring professional standards).
3. **Policy Direction Allowed (Clause 4):** The CS can only give directions to the IG regarding **general matters of policy** (e.g., the general goal of community policing, but not the specific decision on whom to arrest).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection from Political Investigations	This is a crucial check. The IG's independent command ensures that the police cannot be ordered by the Executive to stop investigating a corruption case involving a government official.
Professional Autonomy	The IG is protected from political interference in the day-to-day command of police officers, ensuring promotion and discipline are based on professional, not political, criteria.

III. Real-World Example

- **Scenario:** The Cabinet Secretary calls the IG and orders him to drop an investigation into a political ally.
- **Action based on Article 245(5)(a):** The IG must constitutionally **refuse** the order, citing the absolute prohibition against the CS giving a direction on the **investigation of any offence or enforcement of the law**.
- **Result:** This constitutional separation ensures the operational independence of the police service.

Article 246: National Police Service Commission

246. (1) There is established the **National Police Service Commission (NPSC)**.

(2) The NPSC shall be responsible for—

(a) the **recruitment and appointment** of persons to hold office in the Service;

(b) the **transfer, promotion, and exercise of disciplinary control** over and removal of members of the Service; and

(c) the **determination of terms of service** for members of the Service.

(3) The NPSC shall **observe the principle of civilian oversight** of the police.

I. Simple Explanation

Article 246 establishes the **National Police Service Commission (NPSC)** as the independent civilian body responsible for the human resource management of the entire police force.

1. **Core Role:** The NPSC handles all **HR matters** (recruitment, transfers, promotions, and discipline/removal) for the NPS, effectively removing these powers from the police commanders themselves.
2. **Civilian Oversight:** The NPSC is mandated to observe the principle of **civilian oversight** of the police (Clause 3), meaning the police force is managed by civilians, not just internal police officers.

II. Citizen's Right & Personal Impact

- **Right to Merit-Based Police:** This ensures that entry, promotion, and transfers within the police service are based on objective criteria, not bribery or political connections.
- **Accountability for Misconduct:** If a police officer abuses their power, the **NPSC** is the body responsible for investigating the disciplinary complaint and ordering their removal, ensuring civilian accountability.

III. Real-World Example

- **Scenario:** A senior police officer attempts to promote a relative ahead of more qualified officers.
- **Action based on Article 246(2)(b):** The promotion is illegal. The power of **promotion** rests with the **NPSC**.
- **Result:** The NPSC ensures that HR decisions are made by an independent civilian body, professionalizing the police service.

Article 247: Legislation on national security

247. Parliament shall enact legislation to **give full effect** to the provisions of this Chapter.

I. Simple Explanation

Article 247 is the final legislative mandate for national security. It compels **Parliament** to pass all detailed laws necessary to make the security organs functional and compliant with the Constitution.

1. **Mandate:** Parliament must pass the detailed legal frameworks (e.g., the *National Police Service Act*, the *Kenya Defence Forces Act*) to operationalize the principles and structures of this Chapter.

2. **Full Effect:** The laws must provide all mechanisms necessary to ensure the security organs uphold the **rule of law and human rights** (Article 238).

II. Citizen's Right & Personal Impact

- **Right to Lawful Security:** This ensures that police and military operations are governed by clear, publicly debated laws, not by internal, secret regulations.

III. Real-World Example

- **Scenario:** The Constitution establishes the KDF, but detailed rules on conduct and deployment are needed.
- **Action based on Article 247:** Parliament passes the *Kenya Defence Forces Act* to give **full effect** to Article 241.
- **Result:** This law provides the detailed regulations that citizens, security agencies, and courts rely on to determine the legality of military actions.



“The strength of our forces lies not just in arms, but in professionalism and integrity.”

– Daudi Tonje, Former CDF

Chapter Fifteen: Commissions and Independent Offices

Article 248: Commissions and Independent Offices

248. (1) The following Commissions and Independent Offices are established by this Constitution—

- (a)* the **Kenya National Human Rights and Equality Commission (KNHREC)**;
- (b)* the **National Land Commission (NLC)**;
- (c)* the **Independent Electoral and Boundaries Commission (IEBC)**;
- (d)* the **Parliamentary Service Commission (PSC)**;
- (e)* the **Judicial Service Commission (JSC)**;
- (f)* the **Public Service Commission (PSC)**;
- (g)* the **Salaries and Remuneration Commission (SRC)**;
- (h)* the **Commission on Revenue Allocation (CRA)**;
- (i)* the **National Police Service Commission (NPSC)**;
- (j)* the **Office of the Auditor-General**; and
- (k)* the **Office of the Controller of Budget (CoB)**.

(2) The Commissions and the holders of the Independent Offices are **subject only to this Constitution and the law** and are **independent and not subject to the direction or control of any person or authority**.

I. Simple Explanation

Article 248 provides the definitive list and status of the constitutional watchdogs designed to prevent the abuse of power by the Executive and Legislature.

1. **Definitive List (Clause 1):** The article explicitly names the **eleven** Commissions and Independent Offices. These bodies are created directly by the Constitution, making them fundamental organs of the Republic.
2. **Absolute Independence (Clause 2):** This is the core guarantee: all these bodies and their leaders are **independent** and **subject only to the Constitution and the law**. They are **not subject to the direction or control** of the President, Cabinet, or Parliament. This ensures they can perform their oversight roles fearlessly.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Accountability	This article ensures that there are constitutionally independent bodies—like the IEBC (elections), the CRA (money sharing), and the Auditor-General (spending)—to check the powerful arms of government.
Protection from Political Influence	If the President tries to order the Controller of Budget to release illegal funds or tells the IEBC how to run an election, the CoB and IEBC can legally refuse, citing their constitutional independence .
Merit-Based Governance	The existence of the PSC (civil service HR) and the JSC (judicial HR) ensures that State and judicial employment is based on merit , not political patronage.

III. Real-World Example

- **Scenario:** Parliament passes a law attempting to place the **Auditor-General** under the supervision of the Treasury Cabinet Secretary.
- **Action based on Article 248(2):** The Auditor-General challenges the law in the Supreme Court. The AG argues that the office is explicitly listed as an Independent Office and is **not subject to the direction or control of any person or authority** (including the Executive).
- **Result:** The court would strike down the law, declaring it unconstitutional. This article acts as the legal defence for the independence of the constitutional watchdogs.

Article 249: Principles Guiding Commissions and Independent Offices

249. (1) The Commissions and the holders of Independent Offices—

- (a) are committed to **upholding the sovereignty of the people** (Article 1);
- (b) shall secure the **observance by all State organs of democratic values and principles**; and
- (c) shall **promote constitutionalism**.

(2) Every person has a duty to **co-operate** with the Commissions and independent offices.

I. Simple Explanation

Article 249 defines the fundamental **purpose and mission** of the independent watchdogs, confirming that their role is to serve as the guardians of the Constitution.

1. **Constitutional Guardians (Clause 1):** Their commitment is to the **sovereignty of the people** and ensuring that **all State organs** adhere to **democratic values and principles** (e.g., accountability, rule of law, transparency). They exist to **promote constitutionalism**.

2. **Citizen's Duty (Clause 2):** Every person (citizens, businesses, and public officers) has a constitutional duty to **co-operate** with the Commissions (e.g., provide required information, attend summons).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Protection of Democracy	The Commissions are mandated to defend the very democratic principles that guarantee your rights. They are your first line of defense against executive overreach.
Duty to Assist	If the IEBC requires your help to verify a polling station result, or the Auditor-General summons you for information regarding a contract, you have a constitutional duty to co-operate.

III. Real-World Example

- **Scenario:** A Ministry official refuses to provide documents requested by the **Commission on Revenue Allocation (CRA)**, claiming the CRA has no authority over their ministry.
- **Action based on Article 249(2):** The CRA, citing the constitutional duty that **every person has a duty to co-operate**, can legally compel the official to produce the documents.
- **Result:** The refusal to co-operate is itself a constitutional violation, and the official could be penalized, affirming the broad enforcement power of the Commissions.

Article 250: Composition and Appointment

250. (1) Each Commission and each Independent Office shall consist of at least **three but not more than nine members**.

(2) The members shall be appointed for a **single term of six years** and shall **not be eligible for reappointment**.

(3) The members of a Commission or the holder of an Independent Office **may be removed** from office **only** in accordance with Article 251.

(4) The remuneration payable to a member of a Commission or to the holder of an Independent Office shall be a **charge on the Consolidated Fund** and shall **not be varied to their disadvantage** during their term of office.

I. Simple Explanation

Article 250 sets the standardized rules for the **composition, tenure, and financial independence** of all the Commissions and Independent Offices.

1. **Composition and Tenure (Clauses 1 & 2):** All commissions are small (3 to 9 members). Members serve a single, fixed term of **six years** and are **not eligible for reappointment**. This ensures independence from political influence, as they do not have to campaign for a second term.

2. **Financial Security (Clause 4):** Their salaries are a **charge on the Consolidated Fund** and **cannot be reduced** during their term. This ensures financial independence (similar to Judges, Article 160).
3. **Removal (Clause 3):** They can only be removed through the strict procedure set out in **Article 251** (similar to the removal of a Judge), providing strong job security.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Independent Watchdogs	The six-year, non-renewable term is your guarantee that the commissioners and office holders will make decisions based on the law and the Constitution, not on trying to please the President to secure re-appointment.
Financial Protection	This ensures that the people responsible for controlling the national budget (CoB, AG) cannot be blackmailed by the Executive through threats of salary cuts.

III. Real-World Example

- **Scenario:** A Commissioner is halfway through their term and rules against the government in a sensitive matter. The President attempts to influence the Commissioner by promising them a second term if they reverse the ruling.
- **Action based on Article 250(2):** The Commissioner cannot accept the offer because they are **not eligible for reappointment**.
- **Result:** This single-term rule is the most important structural guarantee of the Commissions' independence.

Article 251: Removal from Office

251. (1) A member of a Commission or the holder of an Independent Office may be removed from office **only for**—

- (a) **gross misconduct or misbehaviour;**
- (b) **inability to perform the functions of office** (incapacity);
- (c) **bankruptcy;**
- (d) **violation of Chapter Six** (Leadership and Integrity); or
- (e) **incompetence.**

(2) A person seeking removal shall petition the **National Assembly**.

(3) If the National Assembly passes the resolution for removal, the Speaker shall inform the President, who shall **suspend the person** and appoint a **tribunal** to investigate the matter.

(7) The President shall **act in accordance with the recommendations of the tribunal**.

I. Simple Explanation

Article 251 provides the strict, non-political procedure for the **removal** of Commissioners and holders of Independent Offices, which is almost identical to the procedure for removing a Judge (Article 168).

1. **Strict Grounds (Clause 1):** Removal is only permitted for five severe grounds (e.g., **gross misconduct, incompetence, bankruptcy, or integrity violation**).
2. **Legislative Initiation (Clause 2 & 3):** The process starts with a petition and requires a resolution supported by the **National Assembly**. The President then appoints a **tribunal** to investigate the allegations.
3. **Binding Tribunal (Clause 7):** The President **must** follow the **recommendations of the tribunal**. The President cannot fire the person, only suspend them pending the tribunal's binding report.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Institutional Integrity	This ensures that Commissioners who are responsible for running elections (IEBC), auditing money (AG), or controlling the budget (CoB) cannot be politically blackmailed or fired arbitrarily by the Executive.
Protection from Abuse	The power to remove the independent watchdogs is heavily controlled by Parliament and an independent judicial tribunal, preventing abuse of power.

III. Real-World Example

- **Scenario:** The President wishes to remove the **Controller of Budget** for refusing to authorize illegal spending.
- **Action based on Article 251:** The President **cannot** fire the CoB. A resolution must pass the National Assembly, and a **tribunal** must be appointed. If the tribunal finds no **gross misconduct**, the President must reinstate the CoB.
- **Result:** This high, objective bar for removal protects the independence of the CoB's decision-making.

Article 252: General Functions of Commissions and Independent Offices

252. (1) Each Commission and each Independent Office—

- (a) shall conduct investigations, on its own initiative or upon complaint;
- (b) has the powers necessary for conciliation, mediation and negotiation;
- (c) shall **recruit its own staff**;
- (d) shall **review the conduct of State officers** and recommend appropriate action;
- (e) shall **report annually** to the President and to Parliament; and

(f) has the power to issue a **subpoena** (a summons to attend court/hearing).

(2) The KNHREC may require a person to attend and give evidence, and generally has the powers of the High Court to **punish for contempt** (disobeying an order).

I. Simple Explanation

Article 252 grants all the Commissions and Independent Offices a common set of strong **investigative, regulatory, and administrative powers**.

1. **Investigative Power (Clause 1a, d, f):** They can investigate matters on their own initiative or upon a complaint, review the **conduct of State officers**, and have the power to issue **subpoenas** to compel attendance and evidence.
2. **Administrative Power (Clause 1c, e):** They have the power to **recruit their own staff** (ensuring independence from the central Public Service Commission) and must **report annually** to the President and Parliament.
3. **KNHREC Enforcement (Clause 2):** The **Kenya National Human Rights and Equality Commission (KNHREC)** is granted extra legal power, including the power to **punish for contempt** (fines or short jail terms) if someone ignores its summons.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Independent Inquiry	You can petition any relevant commission (e.g., KNHREC, NLC) to investigate your complaint, and they are constitutionally bound to take action.
Accountability of State Officers	The power to review the conduct of State officers ensures that Commissions like the EACC can recommend disciplinary or legal action against leaders who violate integrity rules.

III. Real-World Example

- **Scenario:** A Ministry Principal Secretary refuses to appear before the **National Land Commission (NLC)** during an investigation into an illegal land allocation.
- **Action based on Article 252(1)(f):** The NLC issues a **subpoena** to compel the PS's attendance.
- **Result:** Failure to comply with the subpoena is a constitutional violation, and the PS would face consequences, affirming the commission's power to force accountability.

Article 253: Remuneration of Commissioners and Holders of Independent Offices

253. (1) The remuneration of a member of a Commission or the holder of an Independent Office shall be determined by the **Salaries and Remuneration Commission (SRC)**.

(2) The remuneration and benefits payable to a member of a Commission or to the holder of an Independent Office shall be a **charge on the Consolidated Fund** and shall not be varied to their disadvantage.

I. Simple Explanation

Article 253 reinforces the **financial independence** of the Commissions and Independent Offices, ensuring their pay is decided fairly and cannot be reduced.

1. **SRC Determination (Clause 1):** The **Salaries and Remuneration Commission (SRC)** is the sole body that sets the pay for all these office holders.
2. **Financial Shield (Clause 2):** Their pay is a **charge on the Consolidated Fund** and **cannot be reduced** during their term of office, protecting them from financial blackmail.

II. Citizen's Right & Personal Impact

- **Right to Independent Decision-Making:** This ensures that the Commissioners (who enforce integrity and financial rules) are financially secure and can make tough decisions against the Executive without fear of political retaliation through pay cuts.

III. Real-World Example

- **Scenario:** The President proposes a nationwide austerity measure involving a temporary pay cut for all public officers, including Commissioners.
- **Action based on Article 253(2):** The Commissioners' pay **cannot be varied to their disadvantage** during their six-year term.
- **Result:** The constitutional financial shield ensures the Executive's austerity measures do not undermine the independence of the constitutional watchdogs.

Article 254: Legislation on Commissions and Independent Offices

254. Parliament shall enact legislation—

(a) to give **full effect** to the provisions of this Chapter; and

(b) to provide for the implementation of the Commission on Revenue Allocation.

I. Simple Explanation

Article 254 is the final legislative mandate for the Commissions. It compels **Parliament** to pass detailed laws to make the structures and powers of the Commissions fully operational.

1. **Mandate:** Parliament must create the detailed legal framework (e.g., the *IEBC Act*, the *Ethics and Anti-Corruption Commission Act*) to ensure the Commissions can perform all their constitutional duties.
2. **CRA Implementation:** Special emphasis is placed on passing laws to fully implement the **Commission on Revenue Allocation (CRA)**.

II. Citizen's Right & Personal Impact

- **Right to Functional Watchdogs:** This ensures that the Commissions are not just paper organizations but are fully equipped with the legal powers and procedures necessary to execute their mandate effectively.

III. Real-World Example

- **Scenario:** The Constitution establishes the **IEBC** but does not detail how voter registration should be done.
- **Action based on Article 254:** Parliament passes the *Independent Electoral and Boundaries Commission Act* to give **full effect** to Article 248.
- **Result:** This law provides the detailed rules that the IEBC follows, ensuring the electoral process is governed by clear law.



“Oversight is not opposition. It is a safeguard for justice.” – Anne Makori, IPOA
Chairperson

Chapter Sixteen: Amendment of This Constitution

Article 255: Amendment of this Constitution

(1) A proposed amendment to this Constitution shall be enacted in accordance with Article 256 or 257, and approved in accordance with this Article.

(2) A proposed amendment shall be enacted only if it is supported by a referendum in the following matters;

- (a) the supremacy of the Constitution (Article 2);
- (b) the territorial integrity of the Republic (Article 5);
- (c) the Bill of Rights (Chapter Four);
- (d) the sovereignty of the people (Article 1);
- (e) the term of office of the President (Article 141);
- (f) the independence of the Judiciary and the Commissions (Chapters 10 & 15);
- (g) the functions of Parliament (Chapter Eight);
- (h) the objects of and the principle of devolved government (Chapter Eleven).

(3) A proposed amendment is approved by a referendum if—

- (a) at least twenty per cent of the registered voters in each of at least half of the counties (i.e., at least 24 counties) vote in the referendum; and
- (b) more than fifty per cent of the total votes cast in the referendum are in favour of the amendment.

I. Simple Explanation

Article 255 defines the entrenched clauses of the Constitution—the parts so fundamental that they must be approved by a national referendum (popular vote) and cannot be changed by Parliament alone.

Mandatory Referendum (Clause 2): Any change to the eight most fundamental aspects of the Constitution (e.g., the Bill of Rights, the term of the President, devolution, and territory) requires a referendum.

High Approval Threshold (Clause 3): To pass the referendum, the amendment must meet a double majority:

Turnout Rule: At least 20% of the voters must vote in the referendum in at least half of all counties (24 counties).

Simple Majority Rule: More than 50% of the total votes cast nationwide must be in favour of the amendment.

II. Citizen's Right & Personal Impact

Protection of Rights: This ensures that your fundamental human rights (the Bill of Rights) cannot be easily stripped away by politicians in Parliament; any attempt must be approved by you, the voter.

Protection of Devolution: The core principle of devolution is entrenched, meaning the system of County Governments cannot be abolished without a national vote.

Right to Direct Democracy: This gives you the ultimate power to shape the supreme law of the land directly through the ballot box.

III. Real-World Example

Scenario: Parliament passes a Bill proposing to extend the President's term from five years to seven years.

Action based on Article 255(2)(e): The Bill is immediately subject to the mandatory referendum requirement because it affects the term of office of the President.

Result: Even if the Bill passes Parliament unanimously, it will not become law unless it is approved by the people via a referendum that meets the strict turnout rule (20% in 24 counties) and the 50% approval rule.

Article 256: Amendment of the Constitution by Parliamentary Initiative I.

- (1) A Bill to amend this Constitution may be introduced in either House of Parliament.
- (2) A Bill to amend the Constitution shall not be passed in either House unless it is supported at the second and third readings by at least two-thirds of all the members of that House.
- (4) If the Bill relates to a matter concerning county government (Article 189), it must be passed by the Senate and must be approved by at least two-thirds of all the members of the National Assembly.
- (5) If Parliament passes a Bill that requires a referendum (Article 255), the Speakers shall submit the Bill to the IEBC for a referendum.
- (6) Any other amendment (one not requiring a referendum) shall be assented to by the President, and becomes part of the Constitution.

I. Simple Explanation

Article 256 defines the procedure for amending the Constitution when the amendment is initiated by Parliament (the Parliamentary Initiative).

High Threshold (Clause 2): Any amendment Bill must be approved by a special, difficult majority: at least two-thirds of all members of the House in which it is introduced, on two separate votes.

County Matters (Clause 4): If the amendment affects county governments, it must be approved by two-thirds of the Senate AND two-thirds of the National Assembly.

Referendum Check (Clause 5): If the Bill touches on any of the eight entrenched clauses (Article 255), Parliament must submit it to the IEBC for a referendum.

Assent: Amendments that do not require a referendum (non-entrenched clauses) are simply assented to by the President.

II. Citizen's Right & Personal Impact

Protection from Simple Majority: The two-thirds threshold ensures that the Constitution cannot be easily changed by a simple majority party. It requires a broad, cross-political consensus to alter the supreme law.

Protection of Devolution: The requirement for the Senate's two-thirds approval for any change affecting counties ensures that devolution is protected from the National Assembly.

III. Real-World Example

Scenario: Parliament seeks to amend the composition of the Salaries and Remuneration Commission (SRC) (a non-entrenched clause).

Action based on Article 256(2) and (6): The Bill must be introduced and pass both the second and third readings in both Houses with two-thirds majority support. Since it is not an entrenched clause, it then goes to the President for assent.

Result: This ensures that even "minor" amendments require significant political consensus.

Article 257: Amendment of the Constitution by Popular Initiative

(1) An amendment to this Constitution may be proposed by a popular initiative signed by at least one million registered voters.

(4) The IEBC shall verify that the initiative is supported by at least one million registered voters and submit the draft Bill to the County Assemblies.

(6) If the draft Bill is approved by a simple majority of the County Assemblies of at least twenty-four counties, the Speakers of the two Houses shall introduce the Bill in Parliament.

(8) If the Bill relates to a matter that requires a referendum (Article 255), the Speakers shall submit the Bill to the President for transmission to the IEBC.

(10) A Bill passed by the County Assemblies and Parliament, and assented to by the President, shall be assented to by the President within thirty days.

I. Simple Explanation

Article 257 defines the complex process for amending the Constitution when the proposal originates directly from the people (the Popular Initiative).

Initiation (Clause 1): The process starts with a petition supported by at least one million registered voters.

Verification and County Assembly Approval (Clauses 4 & 6): The IEBC verifies the signatures. The Bill is then sent to the 47 County Assemblies. It must be approved by a simple majority in at least 24 County Assemblies (more than half).

Parliamentary Stage: If approved by the counties, the Bill is sent to Parliament (National Assembly and Senate) for a final vote.

Referendum Check (Clause 8): If the Bill affects the entrenched clauses (Article 255), it must then be subjected to a national referendum.

Assent: If all stages are cleared, the President must assent to the Bill within thirty days.

II. Citizen's Right & Personal Impact

Right to Propose Law: This guarantees that citizens can bypass the traditional political class (MPs) and directly initiate changes to the supreme law.

Grassroots Vetting: The mandatory approval by at least 24 County Assemblies ensures that the proposal has broad political support across the regions before it is even debated in Parliament.

III. Real-World Example

Scenario: Citizens collect over one million signatures for a proposed constitutional amendment (e.g., to reorganize electoral boundaries).

Action based on Article 257: The IEBC verifies the signatures. The Bill is then sent to the County Assemblies. If 26 County Assemblies approve it, the Bill moves to Parliament.

Result: This complex, multi-stage process ensures that any change originating from the people has broad national support at both the grassroots (counties) and national (Parliament) levels.



“If your desires conflict with the constitution it is the desires to be changed to adhere to the constitution - not the constitution being changed to suit interests of an individual.” – William Ruto, President

The first Kenyan President to establish Katiba day on 27th August 2025.

Chapter Seventeen: General Provisions

Which is the fundamental legal principle allowing citizens to defend and enforce the supreme law of the land.

Article 258: Enforcement of this Constitution

258. (1) Every person has the right to **institute court proceedings** claiming that this Constitution has been **contravened** or is **threatened** with contravention.

(2) In addition to a person contemplated in clause (1), court proceedings under clause (1) may be instituted by—¹²

- (a) a person acting on behalf of another person who cannot act in their own name;³⁴
- (b) a person acting as a member of, or in the **interest of, a group or class of persons**;⁵⁶
- (c) a person acting in the **public interest**; or⁷⁸
- (d) an association acting in the inter⁹est of one or more of its member¹⁰s.

I. Simple Explanation

Article 258 is the "Guardian Clause." It grants every person the **broadest possible right to sue** in court to protect the Constitution itself.

1. **Direct Right to Sue (Clause 1):** You can go to court if you claim the Constitution has been **violated (contravened)** or is even **threatened** with violation. This applies to any part of the Constitution, not just the Bill of Rights.
2. **Expanded Standing (Clause 2):** This clause radically broadens who can sue, promoting **public interest litigation** (similar to Article 22, but specific to the Constitution as a whole):
 - You don't have to be personally affected.
 - You can sue on behalf of a large **group or class of persons** (class action).
 - You can sue purely in the **public interest** (e.g., an activist suing to challenge an illegal government decision).

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Defend the Supreme Law	This empowers you as an ordinary citizen to be a watchdog of the entire government structure. You can challenge actions by Parliament or the Executive that breach the Constitution, even if the breach doesn't directly affect your personal rights.
Empowerment of Civil Society	The broad standing rule allows NGOs, lobby groups, and concerned citizens to act as legal representatives for the silent majority or for the Constitution itself.
Protection from Executive Overreach	If the President makes an unconstitutional appointment or attempts to undermine the Judiciary, this article provides the legal tool to immediately challenge that action.

III. Real-World Example

- **Scenario:** The President attempts to illegally dissolve an independent commission (like the CRA or IEBC), arguing that a law passed by the previous Parliament allows it.
- **Action based on Article 258(1) and (2)(c):** A civil society lawyer files a petition with the High Court, acting **in the public interest**. They argue that the President's action is illegal because it violates the constitutional integrity of the independent commission (Article 248) and **threatens to contravene** the supreme law.
- **Result:** The courts use this article to assert their power of constitutional review, often issuing a conservatory order to immediately halt the President's action, affirming that any violation of the supreme law can be challenged by the people.

Article 259: Interpreting this Constitution

259. (1) This Constitution shall be interpreted in a manner that—

(a) **promotes its purposes, values and principles;**

(b) **advances the rule of law, and the human rights and fundamental freedoms** in the Bill of Rights;

(c) permits the **development of the law;** and

(d) contributes to **good governance**.

(2) Every provision of this Constitution shall be **construed according to the doctrine of interpretation** that the law is always speaking and is **always capable of being applied**.

(3) Any provision of this Constitution shall be construed as **remedial**, and **all fundamental rights and freedoms shall be interpreted in a manner that favours the greatest possible expansion of those rights and freedoms**.

I. Simple Explanation

Article 259 is the **Interpretation Guide** for the entire Constitution, directed at judges, lawyers, and public officials. It requires a progressive, expansive, and rights-focused reading of the supreme law.

1. **Progressive Interpretation (Clause 1 & 2):** The Constitution must be read in a way that **promotes its values** (Article 10), **advances human rights**, and allows the **law to develop** over time (it's not a static document). Every provision must be interpreted as **always speaking** (relevant today).
2. **Expansive Rights (Clause 3):** All fundamental rights and freedoms **must be interpreted in a manner that favours the greatest possible expansion of those rights and freedoms**. If a right can be interpreted two ways, the court must choose the one that gives the citizen *more* protection.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Maximum Rights	This is the constitutional guarantee that the Judiciary will be your ally when interpreting the Bill of Rights. Any judge must choose the interpretation that gives you the maximum possible benefit and protection.
Foundation for Legal Development	This clause enables the courts to strike down old, discriminatory laws and to adapt the Constitution to new challenges (like cybercrime or climate change) without waiting for Parliament to act.

III. Real-World Example

- **Scenario:** A new technology emerges (e.g., facial recognition surveillance) that is not mentioned in the text of the Constitution.
- **Action based on Article 259(1)(b) and (c):** A lawyer challenges the use of the technology. The court uses the principle of **advancing human rights** and **developing the law** to interpret the **Right to Privacy** (Article 31) broadly, ruling that it extends to biometric and digital information, even though the framers did not write the word "digital."
- **Result:** This ensures the Constitution remains relevant and potent in a changing world.

Article 260: Definitions

260. In this Constitution, unless the context otherwise requires—

“**Adult**” means an individual who has attained the age of **eighteen years**;

“**Child**” means an individual who has not attained the age of **eighteen years**;

“**Citizen**” means a citizen of Kenya;

“**County legislation**” includes an enactment of a county assembly;

“Judicial officer” includes a registrar, deputy registrar, magistrate, Kadhi, and the Registrar of the Supreme Court;

“Public officer” means any person who holds an office in the national or county government, or in the public service;

“State organ” means a commission, office, agency, or other body established by or under this Constitution;

“State officer” means a person holding any of the offices specified in Article 260, including the President, Deputy President, Cabinet Secretary, MP, Senator, Governor, Judge, AG, DPP, and Commissioners.

I. Simple Explanation

Article 260 provides a list of **official definitions** used throughout the Constitution, ensuring clarity and consistency in the legal language.

1. **Ages:** It clearly defines **adult** and **child** as being based on the age of **eighteen years**.
2. **Officer Definitions:** It distinguishes between a **public officer** (anyone working for the government, including a clerk or teacher) and the more politically sensitive office of **State officer** (senior leaders like the President, MPs, Judges, and Commissioners, who are subject to the strict integrity rules of Chapter Six).

II. Citizen’s Right & Personal Impact

- **Clarity of Law:** This ensures that when you read any article, the meaning of key terms (like "child" or "State officer") is consistent and legally certain.
- **Integrity Enforcement:** The definition of **State officer** is crucial because it clarifies exactly which leaders are subject to the ethical scrutiny and sanctions of **Chapter Six (Leadership and Integrity)** and the **Salaries and Remuneration Commission (SRC)**.

III. Real-World Example

- **Scenario:** A dispute arises over whether a senior official in a local parastatal is subject to the integrity rules.
- **Action based on Article 260:** The court checks the definition of **State officer** in Article 260. If the office is listed, the official is subject to Chapter Six. If not, they are still a **public officer** and subject to general law and discipline.
- **Result:** This clause provides the necessary legal precision for enforcing accountability.

Article 261: Alteration of time limits

261. (1) Parliament shall enact the legislation required by this Constitution **within the period specified in the Fifth Schedule**.

(2) Despite clause (1), the National Assembly may, by resolution supported by **two-thirds of all members**, extend the period specified in the Fifth Schedule, but **not beyond the time prescribed by the resolution**.

(3) If Parliament fails to enact legislation in accordance with an order under Article 261(5), any person may apply to the High Court for an order to compel Parliament to enact the legislation.

I. Simple Explanation

Article 261 addressed the **timelines** for Parliament to pass all the required enabling laws (like the *Land Act* or the *Elections Act*) necessary to implement the Constitution after 2010.

1. **Mandatory Deadlines (Clause 1):** The Constitution mandated Parliament to pass dozens of crucial laws within specific deadlines listed in the **Fifth Schedule**.
2. **Extension (Clause 2):** Parliament could extend these deadlines, but only with a high vote threshold: a **two-thirds majority** of the National Assembly.
3. **Judicial Compulsion (Clause 3):** This is the **enforcement mechanism**: if Parliament failed to pass a required law on time, **any person** could sue the High Court for an order to **compel Parliament** to enact the legislation.

II. Citizen's Right & Personal Impact

- **Right to Timely Reform:** This was the critical tool used by citizens and activists after 2010 to prevent Parliament from delaying the implementation of key reforms (like those on elections, land, and integrity).
- **Judicial Check on Legislature:** This clause gives the Judiciary (High Court) the extraordinary power to directly order the Legislature (Parliament) to perform its constitutional duty.

III. Real-World Example

- **Scenario:** The deadline for passing the law to implement the **two-thirds gender rule** (Article 27) expired.
- **Action based on Article 261(3):** Civil society organizations successfully sued the High Court, arguing that Parliament had failed its constitutional duty to pass the required law.
- **Result:** The High Court issued an order compelling Parliament to enact the law, affirming the Judiciary's power to enforce the implementation deadlines.

Article 262: Transitional and consequential provisions

262. The transitional and consequential provisions set out in the **Sixth Schedule** shall take effect on the effective date of this Constitution.

I. Simple Explanation

Article 262 is a concise transition clause. It states that the specific rules for the shift from the old Constitution to the new 2010 Constitution are contained in the **Sixth Schedule**.

1. **Location of Rules:** The detailed rules regarding the continuity of existing laws, the temporary retention of old offices, and the process of judicial vetting are all located in the **Sixth Schedule**.
2. **Effective Date:** These rules took effect immediately on the day the Constitution was promulgated (August 27, 2010).

II. Citizen's Right & Personal Impact

- **Right to Legal Continuity:** The Sixth Schedule ensured that the day the new Constitution took effect, the country's legal system (courts, police, taxes) did not collapse, as old laws remained temporarily valid until new ones could be passed.

III. Real-World Example

- **Scenario:** The High Court, established under the old Constitution, continued to function after August 27, 2010.
- **Action based on Article 262 and the Sixth Schedule:** The Sixth Schedule confirmed that the existing courts and laws remained valid until new ones were fully established, ensuring a smooth transition of legal authority.
- **Result:** This clause provided the stability necessary for Kenya to transition to a new governance framework.



“Kenya needs leadership to implement the constitution, not amend it.” – Kivutha Kibwana, Former Governor

Chapter Eighteen: Transitional and Consequential Provisions

The penultimate article, which formally records when the Constitution became the supreme law.

Article 263: Effective Date of the Constitution

263. This Constitution shall come into force on its **promulgation** and its **effective date** is the **27th August, 2010**.

I. Simple Explanation

Article 263 is the definitive statement on the legal beginning of the new constitutional order.

1. **Promulgation:** The Constitution legally became the supreme law of the land immediately upon its formal declaration, or **promulgation**.
2. **Effective Date:** The specific date recorded as the Constitution's birth date, or **effective date**, is **August 27, 2010**. This date is crucial because it marks the start of all constitutional timelines, terms of office, and legal changes established by the document.

II. Citizen's Right & Personal Impact

Citizen's Right	Personal Impact
Right to Constitutional Supremacy	This date marks the day the Bill of Rights became fully enforceable, and the entire government structure became legally subordinate to the Constitution (Article 2).
Legal Certainty	Every action, law, and decision taken by the government since this date is judged against the standards of the 2010 Constitution .

III. Real-World Example

- **Scenario:** A law passed in 2008 (before the effective date) is challenged in court in 2015 for violating the **Right to Privacy** (Article 31).
- **Action based on Article 263:** The court determines that the **2010 Constitution** is the supreme law. The court uses the Constitution to test the validity of the 2008 law.
- **Result:** The old law is found unconstitutional and is struck down. This demonstrates that the effective date marks the commencement of the new legal era, overriding previous law where conflicts arise.

Article 264: Repeal of Former Constitution

264. Subject to the Sixth Schedule, the **former Constitution is repealed** on the effective date.

I. Simple Explanation

Article 264 is the final legal act: the formal **repeal** (cancellation) of the previous Constitution that governed Kenya before August 27, 2010.

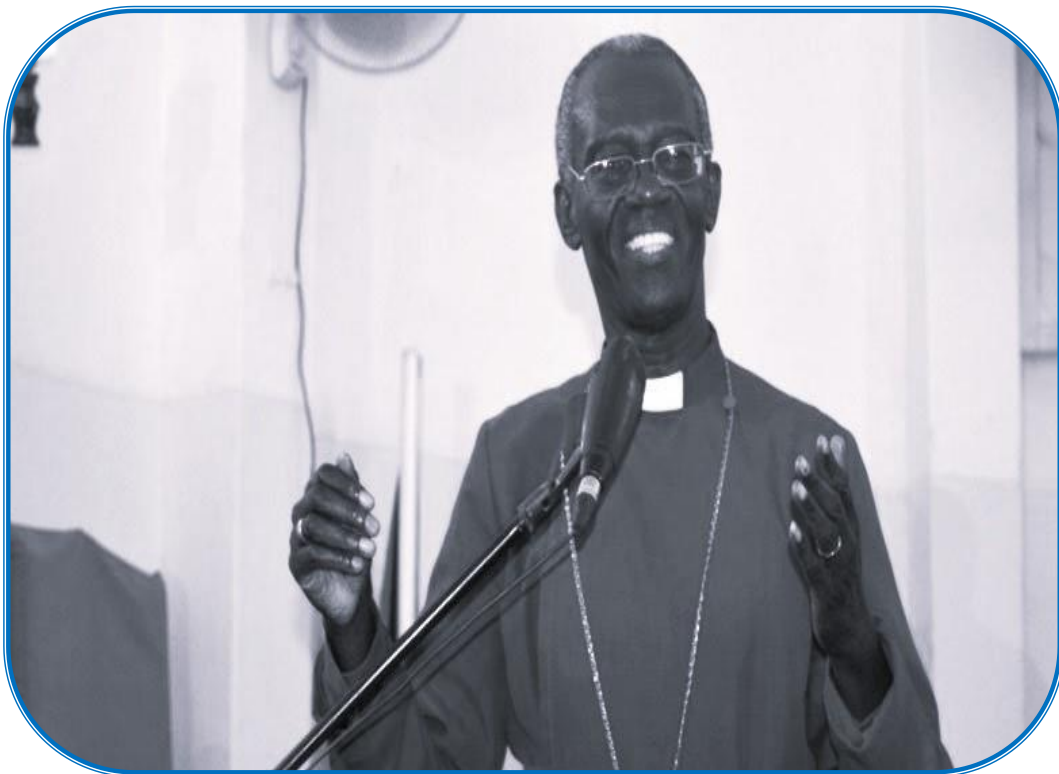
1. **Repeal:** The old Constitution was legally **abolished** on the effective date (August 27, 2010).
2. **Sixth Schedule Exception:** The repeal was **subject to the Sixth Schedule** (Article 262). This exception ensured that necessary elements of the old legal system (like existing courts, civil servants, and old laws) remained in force temporarily to prevent a legal vacuum until the new constitutional organs (like the Supreme Court and the new Parliament) were fully established.

II. Citizen's Right & Personal Impact

- **Finality of Legal Change:** This clause provides the finality of the constitutional reform process, confirming that the country is now governed by a new, democratic, and rights-focused supreme law.
- **A New Chapter:** This marked the legal end of the old constitutional order and the beginning of the Republic defined by the principles of the 2010 document.

III. Real-World Example

- **Scenario:** A legal argument in court is based on a provision that existed only in the old Constitution.
- **Action based on Article 264:** The court immediately rules the provision invalid, as the **former Constitution is repealed**.
- **Result:** This clause ensures that the 2010 Constitution is the sole, authoritative source of constitutional law in Kenya.

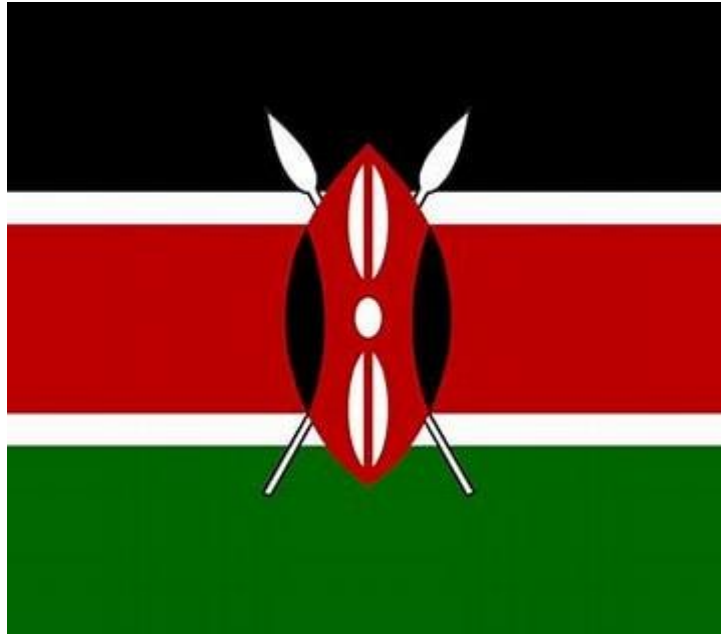


“The constitution calls us to integrity, fairness, and service. These are not options, they are duties.” – Arch Bishop Ndung’u Wabukala

FIRST SCHEDULE
(Article 6 (I))
COUNTIES

- 1.Mombasa
2. Kwale
3. Kilifi
4. Tana River
5. Lamu
6. Taita/Taveta
7. Garissa
8. Wajir
9. Mandera
- 10.Marsabit
- 11.Isiolo
- 12.Meru
- 13.Tharaka-Nithi
- 14.Embu
- 15.Kitui
- 16.Machakos
- 17.Makueni
- 18.Nyandarua
- 19.Nyeri
20. Kirinyaga
21. Murang'a
22. Kiambu
23. Turkana
24. West Pokot
25. Samburu
26. Trans Nzoia
27. Uasin Gishu
28. Elgeyo/Marakwet
29. Nandi
30. Baringo
31. Laikipia
32. Nakuru
33. Narok
34. Kajiado
35. Kericho
36. Bomet
37. Kakamega
38. Vihiga
39. Bungoma
40. Busia
41. Siaya
42. Kisumu
43. Roma Bay
44. Migori
45. Kisii
46. Nyamira
47. Nairobi City

SECOND SCHEDULE
(Article 9 (2))
NATIONAL SYMBOLS
The National Flag



Note— All dimensions given do not necessarily represent any particular measurement and are merely proportional.

Description—

Three major strips of equal width coloured from top to bottom black, red and green and separated by narrow white strips, with a symmetrical shield and white spears superimposed centrally.

(b) The National Anthem

Ee Mungu nguvu yetu Ilete baraka kwetu. Haki iwe ngao na mlinzi Natukae na undugu Amani na uhuru Raha tupate na ustawi 2 Amkeni ndugu zetu Tufanye sote bidii Nasi tujitoe kwa nguvu Nchi yetu ya Kenya, Tunayoipenda Tuwe tayari kuilinda. 3 Natujenge taifa letu Ee, ndio wajibu wetu Kenya istahili heshima Tuungane mikono Pamoja kazini Kila siku tuwe na shukrani.	O God of all creation Bless this our land and nation. Justice be our shield and defender May we dwell in unity Peace and liberty Plenty be found within our borders. 2 Let one and all arise With hearts both strong and true. Service be our earnest endeavour, And our Homeland of Kenya Heritage of splendour, Finn may we stand to defend. 3 Let all with one accord In common bond united, Build this our nation together And the glory of Kenya The fruit of our labour Fill every heart with thanksgiving
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(c) Court of Arms



(d) Public Seal



PART 1 — NATIONAL GOVERNMENT

Examples for each function

1. Foreign affairs, foreign policy and international trade

Example: Kenya signing a trade agreement with the European Union (EPA).

2. Use of international waters and water resources

Example: Agreements between Kenya and Uganda on Lake Victoria fishing rights.

3. Immigration and citizenship

Example: Issuing Kenyan passports and national ID cards by the Department of Immigration.

4. Relationship between religion and state

Example: Government declaring national public holidays like Eid or Christmas.

5. Language policy & promotion of official/local languages

Example: Kiswahili being made compulsory in schools; development of KSL (Kenyan Sign Language).

6. National defence and use of defence forces

Example: Kenya Defence Forces (KDF) operations in Somalia under AMISOM.

7. Police services (standards, criminal law, correctional services)

- **Example (a):** National Police Service Commission recruiting police.
- **Example (b):** Parliament passing the Penal Code amendments.
- **Example (c):** Services like prisons and probation run by the State.

8. National economic policy and planning

Example: National budget prepared by the National Treasury.

9. Courts

Example: Supreme Court hearing presidential election petitions.

10. Monetary policy, currency, banking regulation

Example: Central Bank of Kenya controlling interest rates and printing currency.

11. National statistics

Example: Kenya National Bureau of Statistics (KNBS) conducting a national census.

12. Intellectual property rights

Example: KIPRI registering trademarks or patents in Kenya.

13. Labour standards

Example: Setting minimum wage levels during Labour Day.

14. Consumer protection

Example: CAK punishing a company for misleading advertisements.

15. Education policy, standards & curricula

Example: KICD setting the CBC curriculum.

16. Universities & tertiary institutions

Example: The Commission for University Education issuing charters to universities.

17. Promotion of sports and sports education

Example: Ministry of Sports funding athletes for international competitions.

18. Transport and communication

- **(a) Road traffic:** NTSA setting driving rules.
- **(b) National trunk roads:** Construction of Thika Superhighway by the National Government.
- **(c) Standards for county roads:** KeNHA giving road construction guidelines.
- **(d) Railways:** Operating SGR (Standard Gauge Railway).
- **(e) Pipelines:** Kenya Pipeline Company transporting petroleum.
- **(f) Marine navigation:** Kenya Ports Authority running the Port of Mombasa.
- **(g) Civil aviation:** KCAA regulating airspace and flights.

- **(h) Space travel:** Kenya Space Agency satellite launches.
- **(i) Postal services:** Posta Kenya mail delivery.
- **(j) Telecommunications:** Safaricom licensed nationally by CA.
- **(k) Radio & TV broadcasting:** Licensing TV stations like Citizen TV.

19. National public works

Example: Construction of large dams like Itare Dam or Thwake Dam.

20. Housing policy

Example: Affordable Housing Programme (AHP) under the National Government.

21. General principles of land planning

Example: Ministry of Lands setting the National Spatial Plan.

22. Protection of environment & natural resources

- **(a) Fishing & hunting:** Regulating fishing quotas in Lake Turkana.
- **(b) Wildlife protection:** KWS running national parks like Tsavo.
- **(c) Water protection:** Regulating large dams such as Masinga Dam.
- **(d) Energy policy:** Regulating electricity generation by KPLC/IPP.

23. National referral health facilities

Example: Kenyatta National Hospital (KNH) and Moi Teaching and Referral Hospital (MTRH).

24. Disaster management

Example: National Drought Management Authority responding to drought.

25. Ancient & historical monuments (national importance)

Example: Fort Jesus being protected as a national monument.

26. National elections

Example: IEBC conducting presidential, MP, and senatorial elections.

28. Health policy

Example: Ministry of Health creating COVID-19 national guidelines.

29. Agricultural policy

Example: Setting coffee and tea marketing rules.

30. Veterinary policy

Example: Setting standards for veterinary training and licensing.

31. Energy policy (electricity, gas regulation)

Example: EPRA approving electricity tariffs.

32. Capacity building for counties

Example: National Government training county officers on budgeting.

33. Public investment

Example: LAPSET Corridor development.

34. National betting & casinos

Example: Licensing large casinos like Two Rivers Casino.

35. Tourism policy & development

Example: Branding Kenya globally as a tourist destination (Magical Kenya).

PART 2 — COUNTY GOVERNMENTS

Examples for each county function

1. Agriculture

- **Crop & animal husbandry:** County extension officers training farmers.
- **Sale yards:** Cattle markets operated by the county.
- **Abattoirs:** County slaughterhouses.
- **Disease control:** Vaccination of livestock against anthrax.
- **Fisheries:** County fish ponds and fishing licensing.

2. County health services

- **Hospitals:** County hospitals like Mama Lucy, Coast General.
- **Ambulances:** County-run emergency ambulances.
- **Primary health care:** Closer to community health volunteers.
- **Food licensing:** Licensing eateries and butcheries.
- **Veterinary services:** Treating livestock (not the licensing).
- **Cemeteries:** Running public cemeteries.
- **Waste disposal:** Garbage collection in estates.

3. Pollution control & outdoor advertising

Example: County banning noisy nightclubs in residential areas.

4. Cultural activities, entertainment & public amenities

- **Betting & casinos:** County issuing local betting permits.
- **Liquor licences:** Bars applying for county liquor permits.
- **Libraries & museums:** County libraries like McMillan Library (Nairobi).
- **Sports facilities:** County stadiums e.g., Kasarani managed nationally but Nyayo + county stadiums often co-managed.
- **Parks & beaches:** Uhuru Park management.

5. County transport

- **County roads:** Roads inside estates (e.g., feeders in Embakasi).
- **Street lighting:** Installing floodlights in towns.
- **Traffic & parking:** County parking fees (e.g., Nairobi parking app).
- **Public transport:** Regulating matatu termini.
- **Ferries & harbours:** County ferries (excluding national ports).

6. Animal control and welfare

- **Dog licensing:** Counties issuing dog licences.
- **Animal care facilities:** County animal rescue shelters.

7. Trade development & regulation

- **Markets:** Gikomba supervised by county.
- **Trade licences:** Business permits for shops & kiosks.
- **Fair trading:** Inspecting weighing scales.
- **Local tourism:** Promoting county tourist attractions.
- **Cooperatives:** Registering SACCOs (non-financial).

8. County planning & development

- **Statistics:** County data collection for planning.
- **Mapping:** Survey offices measuring land boundaries.
- **Housing:** County affordable housing projects.
- **Electricity & gas reticulation:** Approving local power connections.

9. Pre-primary & vocational training

Example: Building ECDE classrooms; running vocational training centres.

10. Natural resource conservation (national policies)

- **Soil conservation:** Terracing farms on hills.

- **Forestry:** Managing county forest parks.

11. County public works & services

- **Storm water:** Digging drainage channels in towns.
- **Water & sanitation:** Operating local water companies (e.g., NAWASCO).

12. Fire fighting & disaster management

Example: County fire brigades responding to building fires.

13. Control of drugs and pornography

Example: Counties shutting unlicensed pharmacies and banning harmful content in video halls.

14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

**THIRD SCHEDULE (Articles 74, 141 (3), 148 (5) and 152(4))
NATIONAL OATHS AND AFFIRMATIONS**

**OATH OR SOLEMN AFFIRMATION OF ALLEGIANCE OF THE
PRESIDENT/ACTING PRESIDENT AND THE DEPUTY PRESIDENT**

I....., in full realisation of the high calling I assume as President/Acting President/ Deputy President of the Republic of Kenya, do swear/solemnly affirm that I will be faithful and bear true allegiance to the Republic of Kenya; that I will obey, preserve, protect and defend this Constitution of Kenya, as by law established, and all other laws of the Republic; and that I will protect and uphold the sovereignty, integrity and dignity of the people of Kenya. (In the case of an oath— So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF
OFFICE FOR THE PRESIDENT/ACTING PRESIDENT**

I,swear/solemnly affirm that I will truly and diligently serve the people and the Republic of Kenya in the office of the President/ Acting President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the Office of President/Acting President of the Republic of Kenya; and I will do justice to all in accordance with this Constitution, as by law established, and the laws of Kenya, without fear, favour, affection or (In the case of an oath— So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF
OFFICE FOR THE DEPUTY PRESIDENT**

I,....., do swear/solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office of the Deputy President of the Republic of Kenya; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will at all times, when so required, faithfully and truly give my counsel and advice to the President of the Republic of Kenya; that I will do justice to all

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without fear, favour, affection or ill-will; and that I will not directly or indirectly reveal such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy. (In the case of an oath— So help me God.)

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF
OFFICE FOR A CABINET SECRETARY**

I,....., being appointed a Cabinet Secretary of Kenya, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic; that I will well and truly serve the people and the Republic of Kenya in the Office of a Cabinet Secretary; that I undertake to hold my office as Cabinet Secretary with honour and dignity; that I will be a true and faithful counsellor to the President for the good management of the public affairs of the Republic of Kenya; that I will not divulge directly or indirectly such matters as shall come to my knowledge in the discharge of my duties and committed to my secrecy except as may be required for the due discharge of my duties as Cabinet Secretary; and that I will perform the functions of my office

conscientiously and to the best of my ability. (In the case of an oath— So help me God.).

OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION OF OFFICE FOR SECRETARY TO THE CABINET/ A PRINCIPAL SECRETARY

I.....being called on to exercise the functions of Secretary to the Cabinet /a Principal Secretary, do swear/solemnly affirm that, except with the authority of the President, I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the Cabinet committed to my secrecy, except as may be required for the due discharge of my duties as Secretary to the Cabinet /such Principal Secretary. (In the case of an oath— So help me God.

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OATHS FOR THE CHIEF JUSTICE /PRESIDENT OF THE SUPREME COURT, JUDGES OF THE SUPREME COURT, JUDGES OF THE COURT OF APPEAL AND JUDGES OF THE HIGH COURT.

I.....(The Chief Justice /President of the Supreme Court, a judge of the Supreme Court, a judge of the Court of Appeal, a judge of the High Court) do (swear in the name of the Almighty God)/(solemnly affirm) to diligently serve the people and the Republic of Kenya and to impartially do Justice in accordance with this Constitution as by law established, and the laws and customs of the Republic, without any fear, favour, bias, affection, prejudice or any political, religious or other influence. In the exercise of the judicial functions entrusted to me, I will at all times, and to the best of my knowledge and ability, protect, administer and defend this Constitution with a view to upholding the dignity and the respect for the judiciary and the judicial system of Kenya and promoting fairness, independence, competence and integrity within it. (So help me God.)

OATH /AFFIRMATION OF MEMBER OF PARLIAMENT (SENATE/ NATIONAL ASSEMBLY)

I....., having been elected a member of the Senate /National Assembly do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the People and the Republic of Kenya; that I will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will faithfully and conscientiously discharge the duties of a member of Parliament. (So help me God).

OATH FOR SPEAKER/DEPUTY SPEAKER OF THE SENATE/NATIONAL ASSEMBLY

I.....having been elected as Speaker/Deputy Speaker of the Senate/ National Assembly do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the people and the duty of Kenya; that I will faithfully and conscientiously discharge my duties as

KATIBA MADE FAMILIAR

Speaker/Deputy Speaker of the Senate/National Assembly; that I will obey, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will do right to all manner of persons in accordance with 184

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this Constitution of Kenya and the laws and conventions of Parliament without fear or favour, affection or ill will (So help me God).

**FOURTH SCHEDULE (Article 185(2),186(1) and 187(2)) DISTRIBUTION OF
FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY
GOVERNMENTS**

**FIFTH SCHEDULE (Article 261(1)) LEGISLATION TO BE ENACTED BY
PARLIAMENT**

CHAPTER TWO — REPUBLIC

1. Legislation on culture (Article 11(3)) — Timeline: 5 years
Explanation: Parliament must protect and promote Kenyan cultural heritage.
Example: The National Museums and Heritage Act; laws protecting traditional knowledge.

CHAPTER THREE — CITIZENSHIP

2. Legislation on citizenship (Article 18) — 1 year
Explanation: Laws on citizenship by birth, registration, naturalisation, dual citizenship.
Example: Kenya Citizenship and Immigration Act.

CHAPTER FOUR — BILL OF RIGHTS

3. Freedom of the media (Article 34) — 3 years
Explanation: Laws guaranteeing free and independent media.
Example: Media Council Act.
4. Family (Article 45) — 5 years
Explanation: Laws on marriage, divorce, adoption, and family relations.
Example: Marriage Act, Matrimonial Property Act.
5. Consumer protection (Article 46) — 4 years
Explanation: Protect consumers from unfair practices.
Example: Consumer Protection Act.
6. Fair administrative action (Article 47) — 4 years
Example: Fair Administrative Action Act.
7. Fair hearing (Article 50) — 4 years
Explanation: Right to a fair trial must be defined by law.
Example: Criminal Procedure Code reforms.
8. Rights of persons detained or held in custody (Article 51) — 1 year
Example: Persons Deprived of Liberty Act.
9. Kenya National Human Rights and Equality Commission (Article 59) — 5 years
Example: KNHREC Act (Later split into KNCHR, NGEC, CAJ/ombudsman).

CHAPTER FIVE — LAND & ENVIRONMENT

10. Community land (Article 63) — 5 years
Example: Community Land Act.
11. Regulation of land use & property (Article 66) — 18 months
Example: Land Use and Physical Planning Act.
12. Legislation on land (Article 68) — 5 years
Example: Land Act, Land Registration Act, NLC Act.
13. Agreements on natural resources (Article 71) — 4 years
Explanation: Laws requiring parliamentary approval for extraction agreements.
Example: Mining Act.
14. Legislation on the environment (Article 72) — 1 year
Example: Environmental Management and Coordination Act (EMCA) amendments.

CHAPTER SIX — LEADERSHIP & INTEGRITY

15. Ethics and Anti-Corruption Commission (Article 79) — 2 years

Example: EACC Act.

16. Leadership legislation (Article 80) — 1 year

Example: Leadership and Integrity Act.

CHAPTER SEVEN — REPRESENTATION OF THE PEOPLE

17. Elections legislation (Article 82) — 1 year

Example: Elections Act.

18. Electoral disputes (Article 87) — 1 year

Example: Election Offences Act; procedures for filing election petitions.

19. IEBC legislation (Article 88) — 1 year

Example: IEBC Act.

20. Political parties (Article 92) — 1 year

Example: Political Parties Act.

CHAPTER EIGHT — THE LEGISLATURE

21. Representation of marginalised groups (Article 100) — 5 years

Example: Proposed Affirmative Action bills (still pending).

22. Vacation of office of MP (Article 103) — 1 year

Example: Laws defining how MPs lose their seats.

23. Right of recall (Article 104) — 2 years

Example: Recall of MPs Act.

24. Determination of membership questions (Article 105) — 2 years

Example: Legislation on resolving MP seat disputes.

25. Petition Parliament (Article 119) — 2 years

Example: Public Petitions Act.

CHAPTER NINE — EXECUTIVE

26. Power of Mercy (Article 133) — 1 year

Example: Power of Mercy Act.

27. Assumption of Office of President (Article 141) — 1 year

Example: Assumption of Office of the President Act.

CHAPTER TEN — JUDICIARY

28. System of courts (Article 162) — 2 years

Example: Environment & Land Court Act; Employment & Labour Relations Court Act.

29. Removal from office (Article 168) — 1 year

Example: Tribunal rules for removing judges.

30. Judiciary Fund (Article 173) — 1 year

Example: Judiciary Fund Act.

31. Vetting of judges & magistrates (Sixth Schedule, Section 23) — 1 year

Example: Vetting of Judges and Magistrates Board Act.

CHAPTER ELEVEN — DEVOLVED GOVERNMENT

32. Speaker of County Assembly (Article 178) — 1 year

Example: County Assembly Standing Orders + related statutes.

33. Urban areas & cities (Article 183) — 1 year

Example: Urban Areas and Cities Act.

34. Support for counties (Article 190) — 2 years

Example: Intergovernmental Relations Act.

35. Removal of Governor (Article 181) — 18 months

Example: County Governments Act impeachment procedures.

36. Vacation of office of MCA (Article 194) — 18 months

Example: Laws on when an MCA loses their seat.

37. Public participation & assembly privileges (Article 196) — 3 years

Example: County Governments Act Part VIII.

38. Gender balance and diversity (Article 197) — 3 years

Example: County legislation for inclusion of women & youth.

39. Legislation to effect Chapter 11 (Article 200; Sixth Schedule 15) — 18 months

Example: County Governments Act, Intergovernmental Relations Act.

40. Revenue Funds for counties (Article 207) — 18 months

Example: Public Finance Management Act (County Revenue Fund).

41. Contingencies Fund (Article 208) — 1 year

Example: Public Finance Management Act provisions.

42. Loan guarantees by National Government (Article 213) — 1 year

Example: PFM Act.

43. Financial control (Article 225) — 1 year

Example: Public Finance Management Act.

44. Accounts and audit of public entities (Article 226) — 1 year

Example: Public Audit Act.

45. Procurement of public goods and services (Article 227) — 2 years

Example: Public Procurement and Asset Disposal Act.

CHAPTER THIRTEEN — PUBLIC SERVICE

46. Public service values & principles (Article 232) — 1 year

Example: Public Service (Values and Principles) Act.

CHAPTER FOURTEEN — NATIONAL SECURITY

47. National security organs (Article 239) — 1 year

Example: National Security Council Act.

48. Command of National Police Service (Article 245) — 2 years

Example: National Police Service Act, NPSC Act.

SIXTH SCHEDULE TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

PART 1 – GENERAL

Definitions

These explain what certain terms mean.

Examples:

- **“Boundaries Commission”** → Means the *Interim Independent Boundaries Commission (IIBC)*
Example: The IIBC would continue reviewing constituency boundaries immediately after the 2010 Constitution was adopted.
- **“Electoral Commission”** → Means the *Interim Independent Electoral Commission (IIEC)*
Example: The IIEC ran the first elections under the 2010 Constitution before IEBC was formed.
- **“Former Constitution”** → The Constitution that existed *before 27 August 2010*.
Example: Old rules on the presidency remained in place until the 2013 general elections.

Suspension of Certain Provisions (Section 2)

Some parts of the new Constitution were *not applied immediately*.

Examples:

- Chapters on Parliament and the Executive were **suspended until after the 2013 elections**.
Example: Kenya still had a Prime Minister (Raila Odinga) until 2013 because the new system was not yet active.
- Devolution provisions suspended until county elections in 2013.
Example: Counties did not start operating until governors and MCAs were elected.
- Article 62(2) & (3) on land suspended until NLC was created.
Example: National Land Commission started operations in 2012, so that is when the article became active.

PART 2 – EXISTING OBLIGATIONS, LAWS & RIGHTS

Rights and Obligations Continue (Section 6)

Government rights & contracts remain valid.

Example:

If the government had a road construction contract before 2010, it still remained valid under the new constitution.

Existing Laws (Section 7)

Old laws continue but must be aligned with the new Constitution.

Example:

The Chiefs Authority Act continued but needed amendments to match the new police and administration structure.

Land Holdings (Section 8)

Foreigners' freehold land converted to 99-year leases.

Example:

A foreign company owning freehold farmland automatically got a 99-year lease instead.

PART 3 – NATIONAL GOVERNMENT

First Elections (Section 9)

First elections under the new Constitution were to happen after the end of the 10th Parliament.

Example:

General elections were held in March 2013.

National Assembly Continues (Section 10)

The old National Assembly stayed until the 2013 elections.

Example:

MPs elected in 2007 remained in office until 2013.

Senate Powers Performed by National Assembly (Section 11)

Before Senate was elected, National Assembly performed Senate roles.

Example:

NA debated and passed laws relating to counties before the Senate existed.

Executive (Section 12)

The President, Prime Minister & Cabinet continued operating until 2013.

Example:

President Kibaki and Prime Minister Raila Odinga remained in office until March 2013.

New Oath of Allegiance (Section 13)

All state officers had to take a new oath.

Example:

Judges took the new oath after 2010.

PART 4 – DEVOLVED GOVERNMENT

Preparing for Devolution (Section 14–17)

Laws had to be passed for counties, powers transferred gradually.

Examples:

- National Government had to help counties build capacity.
- The Provincial Administration (chiefs, DCs, DOs) had to be restructured within 5 years.

Example: Provincial administration was later integrated into the national government system under county commissioners.

PART 5 – ADMINISTRATION OF JUSTICE

Rules for Bill of Rights (Section 19)

Old rules stayed until the Chief Justice made new ones.

Example:

People still used section 84 rules to file human rights petitions until new rules were gazetted.

Judicial Service Commission (Section 20)

JSC had to be appointed within 60 days.

Example:

The first JSC under the 2010 Constitution was set up in 2011.

Supreme Court (Section 21)

Had to be established within 1 year.

Example:

The Supreme Court was established in 2011 with Chief Justice Willy Mutunga.

Vetting of Judges (Section 23)

All judges and magistrates were vetted.

Example:

Some judges were removed after failing the vetting process.

Chief Justice Transition (Section 24)

Old CJ left office within 6 months.

Example:

CJ Evan Gicheru retired early in 2011.

PART 6 – COMMISSIONS & OFFICES

Commissions to Be Established (Section 25–29)

New commissions formed within set timelines.

Examples:

- Salaries and Remuneration Commission (SRC) formed within 9 months.
 - IEBC replaced IIEC, but IIEC continued until IEBC was ready.
-

PART 7 – MISCELLANEOUS

Citizenship (Section 30)

Anyone who had citizenship under old law is a citizen by birth.

Example:

A Kenyan born in Uganda to Kenyan parents in 1990 automatically remained Kenyan.

Existing Offices Continue (Section 31)

Public officers continue in their jobs unless removed by new rules.

Example:

The Attorney-General and Auditor-General continued for 1 year before new appointments.

Pensions Protected (Section 32)

You get the pension that is most favourable to you.

Example:

A retired judge kept the pension terms from before the 2010 Constitution.

Succession of Institutions (Section 33)

Old institutions become new ones.

Example:

The old Public Complaints Committee transitioned into the new Ombudsman office (Commission on Administrative Justice).

Currency (Section 34)

Old money remains valid.

Example:

Notes with President Moi or Kibaki's portrait remained legal tender.

Concluding Statements

“WE the 21st Generation; ADOPT, ENACT and give this Constitution to ourselves and to our future generations. GOD BLESS KENYA”

“There is no better way to be Kenyan than to know the constitution of Kenya.” – Author

“I hope we all know that this document affects our lives; every 24 hours, 7 days a week, 365 days a year, and that this is the only thing that matters.” – Author

*“I sincerely thank the Obinna Show for the limitless time they allocated me on their program.
That ensured the nation understood the constitutional role and the vision my generation
carries for our beloved nation.” – Author.*



Ng'ang'a Muigai is, a 29 year old constitutionalist and Economic Rights Advocate.

He is pushing for the constitution of Kenya to be studied from primary to tertiary level of education as a full, mandatory and examinable subject as a means to promote social, economic, cultural and political excellence in Kenya.

In this book, he teamed up with fellow youth from all across Kenya to bring this work to life.

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